

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

<b>EPC REAL ESTATE GROUP, LLC</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>Case No. 2:21-CV-02383-JWB-JPO</b>
<b>v.</b>	)	
	)	
<b>YATES &amp; YATES, LLC and</b>	)	
<b>DENISE YATES,</b>	)	
	)	
<b>Defendants.</b>	)	

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**JOINT SUMMARY OF DISCOVERY DISPUTES**

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Pursuant to the Court’s directive of December 31, 2021, Plaintiff, EPC Real Estate Group, LLC (hereafter, “EPC”), and Defendants, Denise Yates (hereafter, “Yates”) and Yates & Yates LLC (hereafter, “Yates & Yates”) (collectively with Yates, “Defendants”), submit this joint summary of the discovery disputes that remain unresolved in this matter. The Parties have participated in a lengthy telephone conference of approximately four hours and have exchanged numerous emails in an attempt to resolve these disputes. While these efforts have been able to resolve some of the issues, additional disputes remain.

Each of these disputes is related to Defendants’ responses to interrogatories and requests for production propounded by EPC, which responses were due on December 28, 2021, pursuant to the Scheduling Order [Doc. 39] entered by the Court. For the convenience of the Court, Defendants’ responses to EPC’s discovery are attached as follows:

- **Exhibit A** – Yates’ Responses to EPC’s First Interrogatories
- **Exhibit B** – Yates & Yates’ Responses to EPC’s First Interrogatories
- **Exhibit C** – Yates’ Responses to EPC’s First Request for Production
- **Exhibit D** – Yates & Yates’ Responses to EPC’s First Request for Production

Defendants also wish to provide the Court with EPC's discovery responses, which are attached as follows:

- **Exhibit E** – EPC's Responses to Denise Yates' First Request for Production
- **Exhibit F** – EPC's Responses to Denise Yates' First Set of Interrogatories

**A. DEFENDANTS' OBJECTIONS**

**1. Summary from Plaintiff**

As a threshold matter, Defendants have done exactly what this Court admonished them to not to do during the Rule 16 conference held on December 16, 2021. Defendants' written responses are replete with voluminous objections, many of which are either inapplicable or simply make no sense in light of the information requested. In a further attempt to add confusion to their responses, each of Defendants' responses to which an objection is made is followed by a conditional response preceded by "[w]ithout waiving these objections." See e.g. Exhibit A, Yates' response to Interrogatory No. 4. Such responses are strongly disfavored by this District for the very reason they are at issue here – it is entirely unclear what, if any, information and documents are being withheld on the basis of the objections made. *Sprint Commc'ns Co., L.P. v. Comcast Cable Commc'ns, LLC*, No. 11-2684-JWL, 2014 WL 545544, at \*3 (D. Kan. Feb. 11, 2014); *Pro Fit Mgmt., Inc. v. Lady of Am. Franchise Corp.*, 08-CV-2662 JAR/DJW, 2011 WL 939226, at \*9 (D. Kan. Feb. 25, 2011) (holding "subject to and without waiving" objections are improper because, "Defendant's response fails to specify exactly what part of the document requests is being objected to, which is required by Fed.R.Civ.P. 34(b)(2)(C). Without this information, Plaintiff is left guessing as to whether Defendant has produced all documents, or only produced some documents and withheld others on the basis of privilege."). Defendants should be required to supplement their responses to make it clear what is being withheld and on what basis.

**2. Summary from Defendants:**

Defendants' counsel spent four hours on the phone with Plaintiff's counsel on Thursday, December 30, 2021. Many of the Plaintiff's request were subsequently narrowed based on the objections. The objections were narrowly tailored and cited case law in D. Kan. and in other jurisdictions. Defendants agreed to supplement discovery responses and remove some of these objections. The parties have communicated thoroughly about these issues and it appeared there would ultimately be no disagreement. Defendants' counsel received this position of Plaintiffs at 10 a.m. this morning. (January 3, 2022)

**B. DEFENDANTS' DOCUMENT PRODUCTION**

**1. Summary from Plaintiff**

To date, Defendants have produced only a handful of the documents sought in EPC's request for production (only nine (9) pages have been produced in addition to Defendants' initial disclosure documents). Defendants' counsel has admitted that no emails or other electronically stored information has been sent to an eDiscovery vendor for processing in accordance with the ESI Protocol. In their responses, Defendants attempt to blame EPC for the delay by referencing a conversation on December 21, 2021, in which Defendants' counsel revealed that the metadata for electronically stored information may be of no value because counsel had been actively reviewing potentially responsive documents on Yates' computer device rather than conducting such a review on a copy of the data. The undersigned counsel expressed surprise that defense counsel had been potentially altering important metadata evidence and stated that any such document review on Yates' device should not have occurred until the device had been forensically imaged to preserve any metadata that would indicate when EPC documents had been accessed or modified by Yates.

Regardless, this discussion had nothing to do with Defendants' search for responsive documents in the form of communications – email, text messaging, etc. That review could, and should, have been conducted by exporting or copying the applicable emails and then conducting the review. However, that has not been done. As a result, EPC has received virtually no documents in response to its request for production, and Defendants' counsel has been unable to provide any idea when such document production can be made.

## 2. **Summary from Defendants**

The technical explanation above by Plaintiff is not correct. This is a case where there needs to be frank communication about technical matters so that the parties are on the same page. Defendants' counsel offers to provide an explanation to correct the Plaintiff's misperception of the "last-access" piece of metadata. EPC's counsel said it would not be productive.

One way to explain is a reference to a Microsoft blog on the topic: <https://devblogs.microsoft.com/oldnewthing/20111010-00/?p=9433> "How do I access a file without updating its last-access time?" ("The problem with this definition is that it doesn't match the intuitive definition of last-access time")

Defendants' counsel can provide more data.

Because of the misperceptions of Plaintiff above, Defendants did not run a search for responsive files from Dec. 21, 2021, until Dec. 28, 2021. But Defendants worked very hard over the past weekend to prepare a response.

Text messages and emails are also being produced. This was discussed in the four-hour conversation on Thursday, Dec. 30, and in emails since then. The Defendants direct the Court to the very thorough Interrogatory Answers. Defendants have worked extremely hard on

providing responsive to extensive expedited discovery requests. Defendants are not trying to hide records. Defendants are working as fast as they can.

**C. INFORMATION REGARDING DEFENDANTS' INTERACTION WITH EPC CUSTOMERS**

**1. Summary from Plaintiff:**

Defendants are refusing to produce any information or documents regarding their interaction with EPC Customers. *See e.g.* Exhibit A, Yates' response to Interrogatory No. 10; Exhibit B, Yates & Yates' response to Interrogatory Nos. 11; Exhibit C, Yates' response to RFP Nos. 3, 5, and 6; Exhibit D, Yates & Yates' response to RFP Nos. 3, 5 and 9. This information is critical to EPC's ability to show that its confidential, proprietary and trade secret information was used by Defendants in unfairly competing with EPC by soliciting EPC's customers. To the extent EPC has lost any business as a result, such information is directly relevant to EPC's damages. The undersigned counsel has reminded Defendants' counsel that the Stipulated Protective Order entered in this case provides for the designation of certain highly sensitive information as Attorneys' Eyes Only. Despite this protective measure, Defendants have refused to produce this clearly relevant information, and should be ordered to do so.

**2. Summary from Defendants:**

As the Defendants told the Plaintiff:

"Denise was fired and she has an obligation to mitigate her damages. EPC is getting a lot of data in these discovery responses. She is doing a very thorough review of all records and filenames.

We can provide a list (not attorneys eyes only) to describe the client work Yates & Yates did prior to 4/15/21 (the date Denise was fired). Please note this was done out in the open, and it was not a secret. A lot of people at EPC have their own projects. Remember that Denise's salary

was cut significantly in October 2020 and it was agreed she'd work in limited roles. Look at EPC\_000655-658 please- Denise Compensation Plan 10.6.20- Her new title was Asset Consultant.

We are willing to make a list of the client contacts after 4/15/21 Attorneys Eyes Only. We need some kind of protection for these, whether our objections are upheld, there is a protective order, or it is agreed to be AEO.

We do not want to provide Yates & Yates client records and work. We are not willing to forward documents her clients sent her. It's very burdensome even if it's just seasonally updated. It hinders the business. If it is relevant at all, it is not proportionate.”

**D. DEFENDANTS COMPETITIVE CONDUCT PRIOR TO YATES' TERMINATION**

**1. Summary of Plaintiff:**

Defendants have refused to produce information regarding their conduct in direct competition with EPC while Yates was still employed by EPC. *See e.g.* Exhibit B, Yates & Yates' response to Interrogatory No. 8; Exhibit C, Yates' response to RFP Nos. 11 and 12; Exhibit D, Yates & Yates' response to RFP Nos. 5 and 15. Defendants' potential use of EPC confidential, proprietary and trade secret information while Yates was still employed by EPC, and in direct competition with EPC, is directly relevant to EPC's trade secrets claims. In addition, EPC has pled that Defendants were competing with EPC as early as 2018. Amended Complaint [Doc. 13], ¶ 38. This belief has now been confirmed by Defendants, who have disclosed revenue that was realized by Yates & Yates prior to Yates' termination by EPC. Thus, this information is directly relevant to the claims and allegations in the Amended Complaint.

**2. Summary of Defendants:**

This was discussed as a topic to bring to the Court.

Defendants proposed to Plaintiff: “To shorten this up, I think this would involve briefing on the scope of discovery and perhaps the ‘inevitable disclosure doctrine.’ You know this doctrine better than me. If you all want to talk more about this or send caselaw, I will run this by my clients again.”

Plaintiff’s response: “I am not aware as to how the inevitable disclosure doctrine relates to these discovery requests. But you can certainly include such an argument in your briefing to the Court.”

Defendants’ response this morning, 8:06 a.m.: “Denise was fired and she has an obligation to mitigate her damages. EPC is getting a lot of data in these discovery responses. She is doing a very thorough review of all records and filenames.” Followed by that, Defendants described again a compromise offer by which Plaintiff would agree to AEO designation. Defendants stated: “We do not want to provide Yates & Yates client records and work. We are not willing to forward documents her clients sent her. It’s very burdensome even if it’s just seasonally updated. It hinders the business. If it is relevant at all, it is not proportionate.”

**E. DEFENDANTS’ IDENTIFICATION OF WITNESSES**

**1. Summary of Plaintiff:**

EPC has propounded a number of requests seeking the identity of individuals with whom Defendants have communicated about subject matters directly related to the issues in dispute in this case and any communications with those individuals. *See e.g.* Exhibit A, Yates’ response to Interrogatory Nos. 9 and 11; Exhibit B, Yates & Yates’ response to Interrogatory Nos. 5, 9 and 10; Exhibit C, Yates’ response to RFP No. 15; Exhibit D, Yates & Yates’ response to RFP Nos. 15 and 20. Defendants have asserted a myriad of objections, including that the identification of witnesses is protected as attorney work product, and are refusing to provide responsive information

or documents. Defendants have offered no authority for the proposition that the mere identification of witnesses is somehow protected from disclosure as attorney work product. EPC is entitled to know with whom Defendants have communicated regarding such matters as retention of EPC Materials and wiping of EPC devices upon termination of employment – and the content of those communications. Defendants should be required to respond.

**2. Summary of Defendant:**

Please see response to D with respect to witnesses who are Yates & Yates potential client and current client contact.

Defendants did not withhold the identity of witnesses as attorney work product. This was discussed on Dec. 30 as well.

**CONCLUSION**

**Plaintiff's conclusion:**

In an effort to resolve these disputes, EPC has made a number of concessions, including revising certain definitions to narrow the temporal scope of the requests, eliminating mere EPC client contact information from the information being sought, and expressly excluding communication Defendants' counsel may have had with individuals regarding the issues in dispute in this lawsuit. Despite these efforts, a number of issues remain unresolved.

**Defendants' conclusion:**

Defendants had thought (D) and (E) were the only topics that would be taken before the Court. Defendants are responding thoroughly otherwise.

Respectfully submitted,

FISHER & PHILLIPS LLP

/s/ Melody L. Rayl

Melody L. Rayl, KS No. 23730  
Laura Bailey Brown, D. Kan. No. 78908  
Samantha J. Monsees, KS No. 25936  
FISHER & PHILLIPS LLP  
4900 Main Street, Suite 650  
Kansas City, MO 64112  
Tel: (816) 842-8770  
Fax: (816) 842-8767  
Email: [mrayl@fisherphillips.com](mailto:mrayl@fisherphillips.com)  
Email: [lkbrown@fisherphillips.com](mailto:lkbrown@fisherphillips.com)  
Email: [smonsees@fisherphillips.com](mailto:smonsees@fisherphillips.com)

*ATTORNEYS FOR PLAINTIFF*

/s/ Cristina Olson

Cristina Olson #79005  
RAHM, RAHM & McVAY, P.C.  
511 Foster Lane  
Warrensburg, MO 64093  
(330) 322-3917  
[cristina@rahmlaw.com](mailto:cristina@rahmlaw.com)

Carrie M. Brous, KS No. 18157  
BROUS LAW LLC  
3965 W. 83<sup>rd</sup> Street, Suite 115  
Prairie Village, KS 66208  
Phone: (913) 209-8596  
Email: [cbrous@brouslaw.com](mailto:cbrous@brouslaw.com)

*ATTORNEYS FOR DEFENDANTS*

# EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

<b>EPC REAL ESTATE GROUP, LLC</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>Case No. 2:21-CV-02383-JWB-JPO</b>
<b>v.</b>	)	
	)	
<b>YATES &amp; YATES, LLC and</b>	)	
<b>DENISE YATES,</b>	)	
	)	
<b>Defendants.</b>	)	

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**Defendant Denise Yates’ Objections and Answers to  
Plaintiff’s First Set of Interrogatories to Defendant Denise Yates**

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**INTERROGATORY NO. 1:** Identify all Devices and Storage Media that you have used since January 1, 2021, (including for personal and business use) by providing, for each such Device and Storage Media, the following information:

- A. The type, manufacturer and serial number of Device or Storage Media;
- B. The person(s) who have used or had access to the Device or Storage Media;
- C. Your purpose in using the Device or Storage Media (e.g. personal use, performing work for Yates & Yates, performing work for EPC, or downloading, transferring, or saving work-related documents or files).

**RESPONSE:**

Denise Yates does not have a habit of using this jump drives or zip drives, and she does not recall using any except for the drive that is described below and is being imaged by Complete Legal.

Denise Yates’ computer

- (a) Surface\_Laptop\_3\_1873; Device ID C103976B-58E8-4C55-B139-7D2DE243FA2C
- (b) Denise Yates and Nicole Yates

(c) personal use; performing work for Yates & Yates; downloading, transferring, or saving work-related documents or files

Denise Yates' EPC laptop computer

(a) Microsoft Surface Book 8/128 / Model CR9-00001 / Serial 004221594157

(b) Denise Yates; cannot recall anyone else using it

(c) personal use; performing work for Yates & Yates; performing work for EPC and its affiliated companies; or downloading, transferring, or saving work-related documents or files

Denise Yates HP all-in-one computer

(a) Unknown

(b) Denise Yates; Brendon O'Leary; Gina Johnson; Nicole Yates; cannot recall others

(c) personal use; does not recall performing work for Yates & Yates (may have emailed something); performing work for EPC and its affiliated companies; downloading, transferring, or saving work-related documents or files

Denise Yates does not recall using her EPC desktop (HP AIO / Model WW645AA / Serial V9B56AA#ABA) from January 1, 2021, until she turned it into EPC. She may have used it to open a document if the laptop was not charged, or to print/scan something. Ms. Yates does not recall if this occurred in the requested timeframe. This computer was used at a property before Denise Yates obtained it and Denise Yates cannot remember the property.

Denise Yates' cell phone through 5/22/21

(a) iPhone; unknown serial (no longer an AT&T account holder with access to this information online)

(b) Denise Yates

(c) personal use, performing work for Yates & Yates, performing work for EPC and its affiliated companies

Denise Yates' cell phone from 5/22/21 to present

(a) iPhone 12 Pro Max; serial G0NDJ26Y0D45;

(b) Denise Yates

(c) personal use, performing work for Yates & Yates

Denise Yates' jump drive

(a) Serial number Wxc2a90h91r6

(b) Denise Yates

(c) Personal storage, backup of files from EPC laptop

**INTERROGATORY NO. 2:** Identify all Accounts that you have used since January 1, 2021, (including for personal and business use) by providing, for each such Account, the following information:

- A. The type of Account (e.g., electronic mail, cloud storage, etc.);
- B. The name of the service (e.g., Gmail, LinkedIn, Dropbox, etc.)
- C. The date range when the Account was used;
- D. The person(s) who have used or had access to the Account;
- E. The current status of the Account (i.e., active or inactive); and
- F. Your purpose in using the Account (e.g. personal use, performing work for Yates & Yates, performing work for EPC, or downloading, transferring, or saving work-related documents or files).

**RESPONSE:**

For section (D), counsel in this litigation has had or will have access to these accounts.

- A. Email – denise@yatesandyatesco.com
- B. Email
- C. December 8, 2020 to present
- D. Denise Yates
- E. Active
- F. personal use; performing work for Yates & Yates; or downloading or transferring work-related documents or files

- A. Email – denise@yatesandyatescompany.com
- B. Email
- C. This was used prior to December 8, 2020, and has been forwarding information (quickbooks)
- D. Denise Yates
- E. Active (forwarding emails to current email account)
- F. personal use; performing work for Yates & Yates; or downloading or transferring work-related documents or files

- A. Email – yatesandyatescompany@gmail.com
- B. Gmail account that is used for Google Drive storage; email function is not used
- C. April 2021 to present
- D. Denise Yates and Nicole Yates (share folders with each other, with counsel in this litigation and with counsel Rob Barron)
- E. Active
- F. personal use; use for Yates & Yates; or downloading or transferring work-related documents or files

- A. Email – dyatesconsulting@gmail.com
- B. Email/Gmail
- C. Prior to April 2021. The emails since 2021 are advertisements/spam.
- D. No one.
- E. Active but not used.
- F. Personal use; this was not used for business because Ms. Denise Yates decided to get a non-gmail account.

- A. Dropbox
- B. Cloud storage
- C. At least two years ago; to present
- D. Denise Yates
- E. Active
- F. personal use (personal photos); work from a graphic design firm is transferred via the dropbox to Yates & Yates; share with counsel; storage of old photos from EPC (2008 Barrewoods holiday party); for a period Denise Yates' phone pictures would sync to dropbox but that is not occurring anymore.

- A. LinkedIn
- B. Social Media
- C. Sometime in the 2000s to present
- D. Denise Yates
- E. Active
- F. personal use; communicating with business contacts for EPC; posting jobs for EPC; communicating with business contacts for Yates & Yates

- A. Facebook
- B. Social Media
- C. Sometime in the 2000s to present
- D. Denise Yates
- E. Active
- F. personal use; announcement for Yates & Yates

- A. Instagram
- B. Social Media
- C. Sometime in the 2000s to present
- D. Denise Yates
- E. Active
- F. personal use; announcement for Yates & Yates

**INTERROGATORY NO. 3:** State the date on which you began performing work on behalf of Yates & Yates, the nature of your association with Yates & Yates (e.g., owner, employee, independent contractor, etc.), your job title with Yates & Yates and a brief description of your duties with Yates & Yates.

**RESPONSE:**

Began performing work: On or about 10/8/18 (date of incorporation)

Nature of association: Owner

Job title: Owner

Duties: Everything; more specifically back of the house, communication with customers.

**INTERROGATORY NO. 4:** Identify each Communication between you and any other person regarding EPC Materials that any Former EPC Employee, expressly including you, obtained during his or her employment with EPC and that were retained after the end of such Former EPC Employee's employment with EPC, including the date of each communication, the identity of each person participating in the communication, and the substance of the communication.

**RESPONSE:**

Defendant objects to the extent this interrogatory seeks information on communications protected by attorney-client privilege and information contained within documents protected as work product.

Defendant invokes work product protection over attorney notes that would be responsive to this Interrogatory because (1) the materials sought to be protected are documents or tangible things; (2) they were prepared in anticipation of litigation or for trial; and (3) they were prepared by or for a party or a representative of that party. *AKH Co. v. Universal Underwriters Ins. Co.*, 300 F.R.D. 684, 688 (D. Kan. 2014); *see also Pipeline Prods., Inc. v. Madison Companies, LLC*, No. 15-4890-KHV-ADM, 2019 WL 3973955, at \*5 (D. Kan. Aug. 22, 2019) (Draft non-party affidavits and communications with counsel relating to those draft affidavits are classic work product.); *Zapata v. IBP, Inc.*, 175 F.R.D. 574, 576 (D. Kan. 1997); *Ryall v. Appleton Elec. Co.*, 153 F.R.D. 660, 662 (D. Colo. 1994) (denying motion to compel)

Defendant makes the following good-faith effort to respond to Interrogatory No. 5. Defendant preserves an objection based on broadness, vagueness, and ambiguity to the extent that

Defendant has the wrong understanding of the Interrogatory 5, which incorporates the definition of EPC Materials, which incorporates all materials referenced in the Complaint. *See Funk v. Pinnacle Health Facilities XXXII, LP*, No. 17-1099-JTM-KGG, 2018 WL 6042762, at \*4 (D. Kan. Nov. 19, 2018). Defendant reserves the right to calculate the burden in terms of time, money, and procedure if Interrogatory No. 5 is seeking something different than Defendant perceives. *Horizon Holdings, L.L.C. v. Genmar Holdings, Inc.*, 209 F.R.D. 208, 213 (D. Kan. 2002)

Without waiving these objections, Defendant states the following:

Denise Yates and Nicole Yates did not, between themselves, discuss EPC Materials until Nicole Yates resigned from EPC and became a member of Yates & Yates. Communications following this event were for the purpose of obtaining legal advice and not for use in their business.

Denise Yates and Nicole Yates cannot recall communicating with anyone about the records that Denise Yates or Nicole Yates “used or obtained.” (language in the definition of EPC Materials)

Defendants had the following communications with other persons regarding EPC Materials (not about what Denise Yates or Nicole Yates obtained):

Communication with current and prior counsel for EPC: Various dates known to EPC counsel.

Communication with mediator: Various dates, during 11/9/2021 mediation (teleconference) and during subsequent phone calls, subject to confidentiality agreement.

Communication with Complete Legal: 12/21/21 to 12/28/21 and ongoing; content of communication is confidential pursuant to agreement of the parties; the general content is the folders and files (size, structure) on Ms. Denise Yates’ laptop.

Communication with Teresa Benson: 11/3/21; Ms. Benson told Ms. Denise Yates that she has all of her EPC forms. She obtained them when working for EPC and when working for Avanti (which acquired EPC forms when EPC sold The Locale to Avanti); 12/20/21, notes and information protected as attorney work product.

Communication with Robin Jackson: 9/10/21; notes and information protected as attorney work product.

Communication with Kelly Clark: Unknown dates; discussion between Denise Yates and Kelly Clark about how EPC built a financial summary template based off of a copy of a NorthPoint financial form. 10/29/21 and 11/1/21; notes and information protected as attorney work product.

Communication with Jenna Patterson: Unknown date; approximately one discussion between Denise Yates and Jenna Patterson about how EPC built a financial summary template based off of a copy of a NorthPoint financial form.

Communication with Alan Waterman: 11/29/21; notes and information protected as attorney work product.

Communication with John Geither: 12/20/21; notes and information protected as attorney work product.

Communication with Kerry Mattson: 11/29/21; notes and information protected as attorney work product.

Communication with Michele Antenopolous: 12/20/21; notes and information protected as attorney work product.

**INTERROGATORY NO. 5:** Identify all efforts taken by you to ensure that you did not use or disclose any EPC Materials in the course and scope of your duties with Yates & Yates, and the date on which each such action was taken.

**RESPONSE:**

Defendant objects to Interrogatory No. 5 because of the vagueness, ambiguity, and broadness of the reference to EPC Materials, a 229-word definition that ultimately incorporates “other” information about EPC, its customers, and its suppliers and “any materials referenced in the Complaint.” *See Funk v. Pinnacle Health Facilities XXXII, LP*, No. 17-1099-JTM-KGG, 2018 WL 6042762, at \*4 (D. Kan. Nov. 19, 2018). In *Funk*, an interrogatory made reference to an overly broad interrogatory definition. The Court stated that it “sympathizes that the discovery request, as worded, is extremely broad.” *Id.* Here, the definition of EPC Materials includes (*emphasis supplied*):

“EPC Materials” shall mean any materials that Denise Yates used or obtained by virtue of working for EPC or from another current or former employee of EPC to the extent that person obtained the materials by virtue of working for EPC, *whether or not in written or recorded form*, concerning the business or affairs of EPC, including the following: (a) EPC-created proprietary costing tools, project development tools, *solutions*, software, templates, calculators, spreadsheets, proformas, plans, designs or other tools utilized by EPC to assist in the conduct of its business; (b) customer lists, customer preferences and requirements, customer communications regarding proposed or pending projects, and customer contacts; (c) bids, proposals, pricing, and project and design strategy; (d) sales pipeline data, potential contract value and project probability information; (e) *business plans, financial information*, budget information and tools, revenue reports, and accounting documents; and (f) *other nonpublic business information about EPC, its*

customers and its suppliers (in whatever form such information may exist). This includes derivatives of any such materials (including but not limited to notes, photographs, print-outs, etc.) in any form, such as hard copies, electronic files (including but not limited to files on computers, tablets, handheld electronic devices, external storage devices or media, drives, or cloud account storage media such as Box, Google Docs, Evernote, Dropbox, etc.), text messages, or emails. This specifically includes any materials referenced in the Complaint.

Defendant also objects to the extent this interrogatory seeks information protected by attorney-client privilege or contained within documents protected as work product.

Finally, Defendant states that Denise Yates has not signed a non-compete agreement, confidentiality agreement or employee handbook for EPC.

Without waiving these objections, and based on Defendant's understanding of the question, Defendant states that the efforts include:

Defendant had its attorneys communicate on multiple occasions with EPC's past and present counsel to identify what information should not be used or disclosed, even though EPC's attorneys were dismissive of these questions. [See Doc. 23-4, p. 4, from Defendant's counsel: "Please ... describe the records that EPC contends are trade secret ... We have offered to enter a protective order-type agreement in which the parties would agree to not disclose information about each other to third parties."] [Email of 9/27/21 from EPC counsel: "Respectfully, I do not think it is productive to go back and forth with you about whether these documents are trade secrets."]

Defendant's counsel received confirmation from EPC counsel [email dated 10/27/21] that stated:

We are absolutely not attempting to restrict Ms. Yates from "using any general knowledge of the trade," and we do not believe the proposed definition of "Alleged Proprietary and Trade Secret Information of EPC" could be interpreted to be that broad. In fact, it refers specifically to "documents, electronic files and information of EPC," which would not include data obtained from "public records, brokers, and market research reports."

Defendant does not believe any EPC information that was or is considered confidential by Defendant Denise Yates has been used to benefit Yates & Yates. (except for in the defense of this lawsuit)

Defendant has not used either of the two documents that EPC has identified as trade secret: "225 Proposed Market Rent" and "Asset Management Vision Traction Organizer." [email dated 9/27/21]

**INTERROGATORY NO. 6:** Identify each and every document that is, or at any time has been, in your custody, control or possession that constitutes or is comprised, in whole or in part, of EPC Materials. This interrogatory specifically includes any EPC Materials referenced in the Complaint.

**RESPONSE:**

Defendant objects to Interrogatory No. 6, first, because of the vagueness, ambiguity, and broadness of the reference to EPC Materials, a 229-word definition that ultimately incorporates “other” information about EPC, its customers, and its suppliers and “any materials referenced in the Complaint.” See *Funk v. Pinnacle Health Facilities XXXII, LP*, No. 17-1099-JTM-KGG, 2018 WL 6042762, at \*4 (D. Kan. Nov. 19, 2018).

Defendant would have a massive burden in terms of time, money, and procedure to answer this question with precision. *Horizon Holdings, L.L.C. v. Genmar Holdings, Inc.*, 209 F.R.D. 208, 213 (D. Kan. 2002).

- As written, it appears to require a human eye and/or computer-assisted inspection of each document to determine if any boilerplate language, categories, or Excel formulas could match anything within EPC Materials (which by definition include un-written and un-recorded information). As Defendant’s counsel explained to EPC’s counsel, an analysis of the files’ metadata (last accessed / last modified / created) will not be sufficient to answer questions like this. [email from Defendant’s counsel, 12/23/21]
- As written, it appears to ask for every document from the 2000s and 2010s in the AOL email account of Denise Yates, which she previously used for work for EPC and its affiliated companies. The parties have agreed for counsel to search email accounts. [Doc. 45, p. 6, section C] EPC’s counsel stated in an email of 12/20/21: “It honestly never occurred to me that Denise Yates would have 20-year old communication with EPC’s clients.” EPC is requested to narrow the interrogatory so that it is not overly broad and burdensome.

Defendant objects to Interrogatory No. 6 because it seeks irrelevant information. For example, the first two documents in the Defendant’s initial disclosures are presentations by brokers with financial information of EPC and its affiliated companies. This falls into the definition of EPC Materials including: customer communications regarding proposed or pending products, proposals, financial information, etc. However, the dissemination of such information by brokers indicates that trade secrets protections do not apply. Defendant requests that EPC narrow this Interrogatory to seek information relevant to the trade secrets, unjust enrichment, or Lanham Act claims it has pleaded. Rule 26(b) limits the scope of discovery to what is relevant to claims or defenses.

Defendant also objects to the extent this interrogatory seeks information protected by attorney-client privilege or contained within documents protected as work product.

Finally, Defendant states that Denise Yates has not signed a non-compete agreement, confidentiality agreement or employee handbook for EPC.

Without waiving these objections, Defendant states the following:

Denise Yates has customer contacts in her cell phone.

If Denise Yates ever re-saved an EPC template as a Yates & Yates file, she cannot identify the document from memory. Ms. Denise Yates has been requested by EPC to not perform computer searches until Complete Legal makes a copy of her computer (11:30 a.m. on 12/28/21).

Defendant is in possession of multiple proformas that were sent to her by third parties and that are not derived from EPC proformas. She is willing to share those with Plaintiff with information such as her client's name redacted.

**INTERROGATORY NO. 7:** Identify each EPC Client with whom you have had any Communication, directly or indirectly, at any time from April 14, 2021 to the present, and for each such EPC Client, identify each such Communication. This request includes Communication over the phone, in person, by text message, and/or by email.

**RESPONSE:**

Defendant objects to the extent this interrogatory seeks the identity of work product documents or attorney-client privileged information contained within related documents. In addition, Defendant states that Denise Yates has not signed a non-compete agreement, confidentiality agreement or employee handbook for EPC.

Defendant recalls the following regarding the development/management clients of EPC:

Josh Woodbury

Last known home address: Unknown

Telephone number: 801-485-7770

Date of Communication: 4/22/21 to 4/23/21

Location of Communication: Email

Identity of Witnesses: Denise Yates, Josh Woodbury

Identity of Related Documents: Emails in document production

Full Description of Event, Communication, Omission: No longer with EPC and response

Clint Feeley

Last known home address: Unknown

Telephone number: 801-485-7770

Date of Communication: May 2021

Location of Communication: Phone call  
Identity of Witnesses: Denise Yates, Clint Feeley  
Identity of Related Documents: None  
Full Description of Event, Communication, Omission: Mr. Feeley called Ms. Denise Yates looking for financial information; Ms. Yates said she was no longer affiliated with EPC.

#### Jeff Smith

Last known home address: Unknown  
Telephone number: 816.569.1441 Kansas City office  
Date of communication: 4/22/21  
Location of Communication: Email  
Identity of Witnesses: Denise Yates, Jeff Smith  
Identity of Related Documents: Email  
Full Description of Event, Communication, Omission: No longer affiliated with EPC

Date of communication: June 2021  
Location of Communication: Phone call  
Identity of Witnesses: Denise Yates, Jeff Smith  
Identity of Related Documents: n/a  
Full Description of Event, Communication, Omission: Discussing hotel

Date of communication: 10/3/21  
Location of Communication: Sat next to each other on flight  
Identity of Witnesses: Denise Yates, Jeff Smith  
Identity of Related Documents: n/a  
Full Description of Event, Communication, Omission: Various topics

#### Jeff Turk

Last known home address: Unknown  
Telephone number: 816.569.1441 Kansas City office  
Date of Communication: May 2021  
Location of Communication: phone call  
Identity of Witnesses: Denise Yates, Jeff Turk  
Identity of Related Documents: n/a  
Full Description of Event, Communication, Omission: Interested in meeting personal friend that is an architect

Date of Communication: 5/24/21  
Location of Communication: Email  
Identity of Witnesses: Denise Yates, Jeff Turk  
Identity of Related Documents: Email  
Full Description of Event, Communication, Omission: Introduction of Mr. Turk and the friend of Ms. Yates

#### Julie Andrews

Last known home address: Unknown

Telephone number: (816) 741-8540

Date of Communication: 4/22/21

Location of Communication: Emails

Identity of Witnesses: Denise Yates, Julie Andrews

Identity of Related Documents: Emails

Full Description of Event, Communication, Omission: No longer with EPC and response

Date of Communication: December 2021

Location of Communication: In person, holiday party at ConvergeKC property

Identity of Witnesses: Denise Yates, Julie Andrews, her husband

Identity of Related Documents: n/a

Full Description of Event, Communication, Omission: Visited with at Holiday Party

Richie Benninghoven

Last known home address: Unknown

Telephone number: 816-260-9071

Date of Communication: 4/22/21 and 4/26/21

Location of Communication: Emails

Identity of Witnesses: Denise Yates, Richie Benninghoven

Identity of Related Documents: Email

Full Description of Event, Communication, Omission: No longer with EPC; response

Date of Communication: April 2021

Location of Communication: Phone

Identity of Witnesses: Denise Yates, Richie Benninghoven

Identity of Related Documents: N/a

Full Description of Event, Communication, Omission: Catching up with new roles

Josh Udelhofen

Last known home address: Unknown

Telephone number: 314-974-5674

Date of Communication: 5/17/21

Location of Communication: Email

Identity of Witnesses: Denise Yates, Josh Udelhofen

Identity of Related Documents: Email

Full Description of Event, Communication, Omission: No longer with EPC

Date of Communication: 5/18/21

Location of Communication: Phone call

Identity of Witnesses: Denise Yates, Josh Udelhofen

Identity of Related Documents: n/a

Full Description of Event, Communication, Omission: Catching up with new roles

Date of Communication: 5/18/21

Location of Communication: Email

Identity of Witnesses: Denise Yates, Josh Udelhofen  
Identity of Related Documents: Email  
Full Description of Event, Communication, Omission: Thank you follow up to call

Amy Hood

Last known home address: Unknown

Telephone number: (816) 285-3872

Date of Communication: 4/22/21

Location of Communication: Email

Identity of Witnesses: Denise Yates, Amy Hood

Identity of Related Documents: Email

Full Description of Event, Communication, Omission: No longer with EPC (and was never notified by EPC)

Date of Communication: May 2021

Location of Communication: Phone call

Identity of Witnesses: Denise Yates, Amy Hood

Identity of Related Documents: n/a

Full Description of Event, Communication, Omission: Catching up

Date of Communication: 6/3/21

Location of Communication: Email

Identity of Witnesses: Denise Yates, Amy Hood

Identity of Related Documents: Email

Full Description of Event, Communication, Omission: Ms. Hood confirming lunch

Date of Communication: 6/17/21

Location of Communication: In person, Red Door Liberty

Identity of Witnesses: Denise Yates, Amy Hood

Identity of Related Documents: n/a

Full Description of Event, Communication, Omission: Catching up

Date of Communication: 11/18/21

Location of Communication: Texts

Identity of Witnesses: Denise Yates, Amy Hood

Identity of Related Documents: Texts

Full Description of Event, Communication, Omission: Personal note related to her husband passing, response to text

Ora Reynolds

Last known home address: Unknown

Telephone number: 816-455-2500

Date of Communication: 4/22/21

Location of Communication: Email

Identity of Witnesses: Denise Yates, Ora Reynolds

Identity of Related Documents: Email

Full Description of Event, Communication, Omission: No longer with EPC

Date of Communication: December 2021

Location of Communication: In person, holiday party, ConvergeKC property

Identity of Witnesses: Denise Yates, Ora Reynolds, Doug Coleman

Identity of Related Documents: n/a

Full Description of Event, Communication, Omission: Visited with at holiday party

Doug Coleman

Last known home address: Unknown

Telephone number: 816-455-2500

Date of Communication: December 2021

Location of Communication: In person, holiday party

Identity of Witnesses: Denise Yates, Ora Reynolds, Doug Coleman

Identity of Related Documents: n/a

Full Description of Event, Communication, Omission: Visited with at holiday party

Date of Communication: 12/12/21

Location of Communication: Email

Identity of Witnesses: Denise Yates, Doug Coleman

Identity of Related Documents: Email

Full Description of Event, Communication, Omission: Followup from conversation at holiday party

The Ritchie Group

Date of Communication: 4/22/21

Location of Communication: Email

Identity of Witnesses: Denise Yates, not recalled

Identity of Related Documents: Email

Full Description of Event, Communication, Omission: No longer with EPC

Date of Communication: April 2021

Location of Communication: Phone call

Identity of Witnesses: Denise Yates, not recalled

Identity of Related Documents: n/a

Full Description of Event, Communication, Omission: Someone called Denise Yates about an EPC project and Denise Yates said she was no longer affiliated with EPC

Pratima Sharma

Last known home address: Unknown

Telephone number: 972-897-6084

Date of Communication: 6/7/21

Location of Communication: Emails

Identity of Witnesses: Denise Yates, Pratima Sharma

Identity of Related Documents: Emails

Full Description of Event, Communication, Omission: No longer with EPC; response

Date of Communication: 6/8/21  
Location of Communication: Phone call  
Identity of Witnesses: Denise Yates, Pratima Sharma  
Identity of Related Documents: n/a  
Full Description of Event, Communication, Omission: Follow up from email

**INTERROGATORY NO. 8:** Identify each and every person to whom you delivered, sent or otherwise provided a copy of the Brochure identified in paragraph 40 of the Complaint.

**RESPONSE:**

Defendant objects to the extent this interrogatory seeks the identity of work product documents or attorney-client privileged information contained within related documents. In addition, Defendant states that Denise Yates has not signed a non-compete agreement, confidentiality agreement or employee handbook for EPC.

To the extent this Interrogatory is making use of the discovery process to learn the identity of the Yates & Yates clients and potential clients, this Interrogatory seeks irrelevant information that is not proportional to the needs of the case. FRCP 26(b)(1); *Norwood v. United Parcel Serv., Inc.*, No. 19-2496-DDC, 2020 WL 6196149, at \*1 (D. Kan. Oct. 22, 2020), objections overruled, No. 19-2496-DDC-JPO, 2021 WL 75641 (D. Kan. Jan. 8, 2021). Also, this seeks to interrupt the acquisition of potential clients. It is the responsibility of Denise Yates (who has claims against EPC and its affiliated companies) to mitigate damages and earn a living.

In *Westgate Resorts, Ltd. v. Wesley Financial Group, LLC*, Case No. 3:20-cv-00599 (M.D. Tenn. – December 1, 2020), which was a trade secrets and Lanham Act case, the Court addressed whether a party should reveal customers of one party to the other party (in the context of a discovery dispute over an Attorney Eyes Only designation). The Court said it was “especially concerned about the injury to these nonparties, who have no part and no representation in this lawsuit.” The Court ultimately limited disclosure of customer information to a few who would be the “best source of data regarding financial loss” to the party seeking the information. In this case, the contacts below are the best source of information regarding whether anyone was confused or misled by the brochure.

Without waiving these objections, Defendant recalls the following regarding the development/management clients of EPC:

Josh Woodbury  
Last known home address: Unknown  
Telephone number: 801-485-7770

Jeff Smith  
Last known home address: Unknown

Telephone number: 816.569.1441 Kansas City office

Julie Andrews

Last known home address: Unknown

Telephone number: (816) 741-8540

Richie Benninghoven

Last known home address: Unknown

Telephone number: 816-260-9071

Josh Udelhofen

Last known home address: Unknown

Telephone number: 314-974-5674

Amy Hood

Last known home address: Unknown

Telephone number: (816) 285-3872

Ora Reynolds

Last known home address: Unknown

Telephone number: 816-455-2500

The Ritchie Group

Scott Laneri, Jonathan Ritchie, Tyler Ritchie

Last known home addresses: Unknown

Telephone number: 801-433-2200

Pratima and Bhuvan Sharma

Last known home address: Unknown

Telephone number: 972-897-6084

**INTERROGATORY NO. 9:** Identify each person with whom you have had any Communication at any time from April 14, 2021 to the present and in which EPC, its customers, business or services was discussed or mentioned, and for each such person, identify each such Communication. This request includes Communication over the phone, in person, by text message and/or by email.

## **RESPONSE:**

Defendant incorporates the objections and response to Interrogatory No. 4.

Defendant objects to providing information that will reveal privileged information about the investigation for its claims under the Missouri Human Rights Act and Missouri contract law. A list of interviewed witnesses would reveal Defendant's attorneys' mental impressions, conclusions, opinions, and legal theories regarding whether evidence does or does not support certain claims and the pattern of preparation for trial. *See State ex rel. Atchison, Topeka, and Santa Fe Ry. Co. v. O'Malley*, 898 S.W.2d 550, 554-555 (Mo. 1995). Correspondingly, this Interrogatory seeks information relevant to the impending discrimination, retaliation, and contract claims of Defendant – not the claims in the instant case. Rule 26(b) limits the scope of discovery to what is relevant to claims or defenses.

Defendant objects additionally because this interrogatory seeks irrelevant information about its business. The interrogatory is too broad. It would be impossible to answer with any degree of certainty. It has been discussed (in writing) that Yates & Yates is operating using its general knowledge of the trade. Therefore, Yates & Yates communicates every day about the same business or services that EPC is engaged in. Defendant's counsel received confirmation from EPC counsel [email dated 10/27/21] that stated:

We are absolutely not attempting to restrict Ms. Yates from “using any general knowledge of the trade,” and we do not believe the proposed definition of “Alleged Proprietary and Trade Secret Information of EPC” could be interpreted to be that broad. In fact, it refers specifically to “documents, electronic files and information of EPC,” which would not include data obtained from “public records, brokers, and market research reports.”

Defendant would have a massive burden in terms of time, money, and procedure to answer this question with precision. *Horizon Holdings, L.L.C. v. Genmar Holdings, Inc.*, 209 F.R.D. 208, 213 (D. Kan. 2002). It appears to require Defendant to review all phone logs, calendar entries, notes, emails, text messages, etc. for the purpose of trying to remember any communication in which Ms. Denise Yates said (for example), “I used to work for EPC.”

This interrogatory seeks information that is irrelevant on its face. *McBride v. Medicalodges, Inc.*, 250 F.R.D. 581, 586 (D. Kan. 2008) This interrogatory seeks information that is not proportional to the needs of the case. FRCP 26(b); *Norwood v. United Parcel Serv., Inc.*, No. 19-2496-DDC, 2020 WL 6196149, at \*1 (D. Kan. Oct. 22, 2020), objections overruled, No. 19-2496-DDC-JPO, 2021 WL 75641 (D. Kan. Jan. 8, 2021).

This interrogatory seeks information to support claims that were removed from the Plaintiff's complaint. Defendants are not being sued for breach of a non-compete or a non-solicit agreement. With its First Amended Complaint, EPC removed allegations that Ms. Yates personally signed a confidentiality agreement that contained non-competition language. [See Doc. 13, ¶¶ 18, 60; compare Doc. 1, ¶ 21]. With its First Amended Complaint, EPC removed its Breach of Contract Claim; specifically the non-compete allegations in Doc. 1, ¶ 97, and the document attached as Exhibit A after Defendants questioned its authenticity.

Without waiving this objection, Defendant states that Denise Yates recalls speaking with Brendon O’Leary about EPC potentially hiring Yates & Yates to provide services to EPC. The dates of these conversations is not presently recalled, but Defendant will continue looking for related records.

Denise Yates has told many people that she used to work for EPC.

**INTERROGATORY NO. 10:** Identify each current or former EPC Client with whom you have had Communication for the purpose of doing business with, or potentially doing business with, Yates & Yates, and include the date(s) of such communication.

**RESPONSE:**

Defendant objects to Interrogatory No. 10 based on relevance. This interrogatory requests information for which the relevancy is not readily apparent. *McBride v. Medicalodges, Inc.*, 250 F.R.D. 581, 586 (D. Kan. 2008) This Interrogatory has nothing to do with EPC, communications about EPC, or the broadly defined EPC Materials.

There is no non-compete agreement here. With its First Amended Complaint, EPC removed allegations that Ms. Yates personally signed a confidentiality agreement that contained non-competition language. [See Doc. 13, ¶¶ 18, 60; compare Doc. 1, ¶ 21]. With its First Amended Complaint, EPC removed its Breach of Contract Claim; specifically the non-compete allegations in Doc. 1, ¶ 97. Rule 26(b) limits the scope of discovery to what is relevant to claims or defenses.

Additionally, the intrusion into Defendant’s clients and potential clients would be of such marginal relevance that the potential harm occasioned by discovery would outweigh the ordinary presumption in favor of broad disclosure. *Horizon Holdings, L.L.C. v. Genmar Holdings, Inc.*, 209 F.R.D. 208, 214 (D. Kan. 2002). Yates & Yates’ clients and potential clients do not need to be revealed to EPC.

Defendant objects to this interrogatory because it seeks information that is not proportional to the needs of the case. FRCP 26(b)(1). *Norwood v. United Parcel Serv., Inc.*, No. 19-2496-DDC, 2020 WL 6196149, at \*1 (D. Kan. Oct. 22, 2020), objections overruled, No. 19-2496-DDC-JPO, 2021 WL 75641 (D. Kan. Jan. 8, 2021).

Ms. Yates was discharged and is free to compete with EPC and moreover is required to mitigate her damages under the Missouri Human Rights Act.

**INTERROGATORY NO. 11:** Identify each person with whom you have had Communication during the period April 14, 2021, to the present regarding the deletion, recovery, copying, transferring, reinstalling or otherwise modifying of electronically stored information and data contained on any EPC-issued Device, and for each such person, identify each such Communication.

**RESPONSE:**

Defendant objects to the extent this seeks information protected by attorney-client privilege or information contained in records protected as work product. In addition, communications with Nicole Yates are protected by the common interest privilege.

Without waiving the objection, Defendant states:

Denise Yates has had conversations with her mother and boyfriend (Chris Ragot) that are responsive, but cannot be certain of the dates and exactly what was said.

The following are communications that include information protected by privilege and by confidentiality agreements:

Communication with current and prior counsel for EPC: Various dates; privileged.

Communication with mediator: Various dates, during 11/9/2021 mediation (teleconference) and during subsequent phone calls, subject to confidentiality agreement.

Communication with Complete Legal: 12/21/21 to 12/28/21 and ongoing; content of communication is confidential pursuant to agreement of the parties; the general content is the folders and files (size, structure) on Ms. Denise Yates' laptop.

Communication with Teresa Benson: 11/3/21; Ms. Benson told Ms. Denise Yates that she has all of her EPC forms. She obtained them when working for EPC and when working for Avanti (which acquired EPC forms when EPC sold The Locale to Avanti); 12/20/21, notes, draft affidavit, and information protected as attorney work product.

Communication with Robin Jackson: 9/10/21; notes and information protected as attorney work product.

Communication with Kelly Clark: Unknown dates; discussion between Denise Yates and Kelly Clark about how EPC built a financial summary template based off of a copy of a NorthPoint financial form. 10/29/21 and 11/1/21; notes and information protected as attorney work product.

Communication with Jenna Patterson: Unknown date; approximately one discussion between Denise Yates and Jenna Patterson about how EPC built a financial summary template based off of a copy of a NorthPoint financial form.

Communication with Alan Waterman: 11/29/21; notes and information protected as attorney work product.

Communication with John Geither: 12/20/21; notes and information protected as attorney work product.

Communication with Kerry Mattson: 11/29/21; notes and information protected as attorney work product.

Communication with Michele Antenopolous: 12/20/21; notes and information protected as attorney work product.

Brendon O'Leary

Last known home address: Unknown

Telephone number: 913.961.6849

Date of Communication: 4/23/21-4/25/21

Location of Communication: Email

Identity of Witnesses: Denise Yates, Brendon O'Leary, Gina Johnson

Identity of Related Documents: D00268

Full Description of Event, Communication, Omission: Discussion of transferring data to another computer and paying fair market value for the computer.

Mark Nasteff

Last known home address: Unknown

Telephone number: 816-792-3529

Date of Communication: 4/28/21

Location of Communication: Phone

Identity of Witnesses: Mark Nasteff, Cristina Olson, Carrie Brous

Identity of Related Documents: Email between Denise Yates, Cristina Olson, and Carrie Brous (privileged); see also Doc. 23-4, p. 1 (letter from Mark Nasteff)

Full Description of Event, Communication, Omission: Mark Nasteff said EPC did want the laptop and desktop back restored.

Best Buy Geek Squad

[identity of individuals not recalled]

Telephone number: 816-584-2776

Date of Communication: 4/27/21

Location of Communication: In person, at the Best Buy

Identity of Witnesses: Denise Yates; unknown

Identity of Related Documents: [Doc. 23-3]  
Full Description of Event, Communication, Omission: Ms. Yates hired Best Buy to transfer the files

Date of Communication: 4/28/21 – 4/29/21  
Location of Communication: Call; In person, at the Best Buy  
Identity of Witnesses: Denise Yates; unknown  
Identity of Related Documents: [Doc. 23-3]  
Full Description of Event, Communication, Omission: Ms. Yates hired Best Buy to restore files on the EPC laptop and desktop

Date of Communication: 9/13/21  
Location of Communication: In person, at the Best Buy  
Identity of Witnesses: Denise Yates; unknown  
Identity of Related Documents: [Doc. 23-3]  
Full Description of Event, Communication, Omission: Look up service order.

Robert Green  
Last known home address: Unknown  
Telephone number: 785-727-5162

Date of Communication: sometime in December 2021  
Location of Communication: In person  
Identity of Witnesses: Denise Yates, Robert Green  
Identity of Related Documents: n/a  
Full Description of Event, Communication, Omission: Denise Yates described that a lawsuit was filed that involved allegations that she wiped her EPC computers.

Respectfully submitted,

RAHM, RAHM & McVAY, P.C.

      /s/ Cristina Olson      

Cristina Olson #79005

511 Foster Lane

Warrensburg, MO 64093

(330) 322-3917

cristina@rahmlaw.com

Carrie M. Brous, KS #18157

BROUS LAW LLC

3965 West 83rd Street, #115

Prairie Village, KS 66208

Tel: (913) 209-8596

cbrous@brouslaw.com

**ATTORNEYS FOR DEFENDANTS**

CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2021, the foregoing document was emailed to counsel for Plaintiff, Samantha Monsees (smonsees@fisherphillips.com) and Melody Rayl (mrayl@fisherphillips.com)

      /s/ Cristina Olson      

Cristina Olson

Attorney for Defendants

# EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

<b>EPC REAL ESTATE GROUP, LLC</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>Case No. 2:21-CV-02383-JWB-JPO</b>
<b>v.</b>	)	
	)	
<b>YATES &amp; YATES, LLC and</b>	)	
<b>DENISE YATES,</b>	)	
	)	
<b>Defendants.</b>	)	

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**Defendant Yates & Yates Objections and Answers to Plaintiff’s First Set of Interrogatories  
to Defendant Yates & Yates, LLC**

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**INTERROGATORY NO. 1:** Identify all Devices and Storage Media that any Former EPC Employee has used since January 1, 2021, to conduct business on behalf of Yates & Yates by providing, for each such Device and Storage Media, the following information:

- A. The type, manufacturer and serial number of Device or Storage Media;
- B. The Former EPC Employee who has used or had access to the Device or Storage Media;
- C. The Former EPC Employee’s purpose in using the Device or Storage Media (e.g. personal use, performing work for Yates & Yates, performing work for EPC, or downloading, transferring, or saving work-related documents or files).

**RESPONSE:**

To the best of their collective recollection, Denise Yates and Nicole Yates did not use thumb drives or jump drives in their business, and they do not have a habit of using this type of device.

Denise Yates’ computer

- (a) Surface\_Laptop\_3\_1873; Device ID C103976B-58E8-4C55-B139-7D2DE243FA2C
- (b) Denise Yates and Nicole Yates
- (c) personal use; performing work for Yates & Yates; downloading, transferring, or saving work-related documents or files

Denise Yates' EPC laptop computer

- (a) Microsoft Surface Book 8/128 / Model CR9-00001 / Serial 004221594157
- (b) Denise Yates; cannot recall anyone else using it
- (c) personal use; performing work for Yates & Yates; performing work for EPC and its affiliated companies; or downloading, transferring, or saving work-related documents or files

Denise Yates HP all-in-one computer

- (a) Unknown
- (b) Denise Yates; Brendon O'Leary; Gina Johnson; Nicole Yates; cannot recall others
- (c) personal use; does not recall performing work for Yates & Yates (may have emailed something); performing work for EPC and its affiliated companies; downloading, transferring, or saving work-related documents or files

Denise Yates does not recall using her EPC desktop (HP AIO / Model WW645AA / Serial V9B56AA#ABA) from January 1, 2021, until she turned it into EPC. She may have used it to open a document if the laptop was not charged, or to print/scan something. Ms. Yates does not recall if this occurred in the requested timeframe. This computer was used at a property before Denise Yates obtained it and Denise Yates cannot remember the property.

Denise Yates' cell phone through 5/22/21

- (a) iPhone; unknown serial (no longer an AT&T account holder with access to this information online)
- (b) Denise Yates
- (c) personal use, performing work for Yates & Yates, performing work for EPC and its affiliated companies

Denise Yates' cell phone from 5/22/21 to present

- (a) iPhone 12 Pro Max; serial G0NDJ26Y0D45;
- (b) Denise Yates
- (c) personal use, performing work for Yates & Yates

Nicole Yates' computer

- (a) Surface; Device ID 70D1DD80-8C5E-4996-B8C2-F170F40F95EB
- (b) Nicole Yates
- (c) personal use, performing work for Yates & Yates, downloading, transferring, or saving work-related documents or files

Nicole Yates' cell phone

- (a) iPhone 12 Pro Max; Serial G0PFL0S30D41
- (b) Nicole Yates
- (c) personal use, performing work for Yates & Yates

**INTERROGATORY NO. 2:** Identify all Accounts that any Former EPC Employee has used since January 1, 2021, to conduct business on behalf of Yates & Yates by providing, for each such Account, the following information:

- A. The type of Account (e.g., electronic mail, cloud storage, etc.);
- B. The name of the service (e.g., Gmail, LinkedIn, Dropbox, etc.)
- C. The date range when the Account was used;
- D. The person(s) who have used or had access to the Account;
- E. The current status of the Account (i.e., active or inactive); and
- F. The Former EPC Employee's purpose in using the Account (e.g. personal use, performing work for Yates & Yates, performing work for EPC, or downloading, transferring, or saving work-related documents or files).

**RESPONSE:**

The following response interprets "conduct business" broadly. For example, dyatesconsulting@gmail.com has not been used to interact with clients, but it is listed in case it has ever been used as a login on a business website.

Also, for section (D), counsel in this litigation has had or will have access to these accounts.

- A. Email – denise@yatesandyatesco.com
- B. Email
- C. December 8, 2020 to present
- D. Denise Yates
- E. Active
- F. personal use; performing work for Yates & Yates; or downloading or transferring work-related documents or files

- A. Email – nicole@yatesandyatesco.com
- B. Email
- C. August 1, 2021 to present
- D. Nicole Yates
- E. Active
- F. personal use; performing work for Yates & Yates; or downloading or transferring work-related documents or files

- A. Email – denise@yatesandyatescompany.com
- B. Email
- C. This was used prior to December 8, 2020, and has been forwarding information (quickbooks)
- D. Denise Yates
- E. Active (forwarding emails to current email account)
- F. personal use; performing work for Yates & Yates; or downloading or transferring work-related documents or files

- A. Email – nicole@yatesandyatescompany.com
- B. Email
- C. set up but never used
- D. n/a
- E. Inactive
- F. n/a

- A. Email – yatesandyatescompany@gmail.com
- B. Gmail account that is used for Google Drive storage; email function is not used
- C. April 2021 to present
- D. Denise Yates and Nicole Yates (share folders with each other, with counsel in this litigation and with counsel Rob Barron)
- E. Active
- F. personal use; use for Yates & Yates; or downloading or transferring work-related documents or files

- A. Email – dyatesconsulting@gmail.com
- B. Email/Gmail
- C. Prior to April 2021. The emails since 2021 are advertisements/spam.
- D. No one.
- E. Active but not used.
- F. Personal use; this was not used for business because Ms. Denise Yates decided to get a non-gmail account.

- A. Dropbox
- B. Cloud storage
- C. At least two years ago; to present
- D. Denise Yates
- E. Active
- F. personal use (personal photos); work from a graphic design firm is transferred via the dropbox to Yates & Yates; share with counsel; storage of old photos from EPC (2008 Barrewoods holiday party); for a period Denise Yates' phone pictures would sync to dropbox but that is not occurring anymore.

- A. Dropbox
- B. Cloud storage
- C. Unknown origin to the present
- D. Nicole Yates
- E. Active
- F. personal use; transfer files for Yates & Yates

- A. LinkedIn
- B. Social Media
- C. Sometime in the 2000s to present
- D. Denise Yates
- E. Active
- F. personal use; communicating with business contacts for EPC; posting jobs for EPC; communicating with business contacts for Yates & Yates

- A. LinkedIn
- B. Social Media
- C. Sometime in the 2000s to present
- D. Nicole Yates
- E. Active
- F. personal use; communicating with business contacts for EPC; posting jobs for EPC; communicating with business contacts for Yates & Yates

**INTERROGATORY NO. 3:** State the date on which Yates & Yates was formed, each and every state in which Yates & Yates is currently registered to do business, and a general description of the nature of the business of Yates & Yates and the products or services it offers.

**RESPONSE:**

Yates & Yates LLC  
Date formed: 10/8/2018  
States: Missouri  
General description: Please see Y&Y biography/brochure produced herewith.

**INTERROGATORY NO. 4:** Identify each Former EPC Employee, and for each such individual, state the date on which such person began performing work on behalf of Yates & Yates, the nature of such person's association with Yates & Yates (e.g., owner, employee,

independent contractor, etc.), the person's job title with Yates & Yates and a brief description of the person's duties with Yates & Yates.

**RESPONSE:**

Denise Yates

Last known home address and telephone number: Please contact through counsel.

Performing work for Yates & Yates: 2018

Nature of association with Yates & Yates: Owner

Job title: Owner

Brief description of duties: Back of the house, communication with customers.

Nicole Yates

Last known home address and telephone number: Please contact through counsel.

Performing work for Yates & Yates: Aug 1, 2021

Nature of association with Yates & Yates: Owner

Job title: Owner

Brief description of duties: Front of the house, on-site team, marketing, leadership

**INTERROGATORY NO. 5:** Identify each Communication between Yates & Yates and any other person regarding EPC Materials that any Former EPC Employee obtained during his or her employment with EPC and that were retained after the end of such Former EPC Employee's employment with EPC, including the date of each communication, the identity of each person participating in the communication, and the substance of the communication.

**RESPONSE:**

Defendant objects to the extent this interrogatory seeks information on communications protected by attorney-client privilege and information contained within documents protected as work product.

Defendant invokes work product protection over attorney notes that would be responsive to this Interrogatory because (1) the materials sought to be protected are documents or tangible things; (2) they were prepared in anticipation of litigation or for trial; and (3) they were prepared by or for a party or a representative of that party. *AKH Co. v. Universal Underwriters Ins. Co.*, 300 F.R.D. 684, 688 (D. Kan. 2014); *see also Pipeline Prods., Inc. v. Madison Companies, LLC*, No. 15-4890-KHV-ADM, 2019 WL 3973955, at \*5 (D. Kan. Aug. 22, 2019) (Draft non-party affidavits and communications with counsel relating to those draft affidavits are classic work

product.); *Zapata v. IBP, Inc.*, 175 F.R.D. 574, 576 (D. Kan. 1997); *Ryall v. Appleton Elec. Co.*, 153 F.R.D. 660, 662 (D. Colo. 1994) (denying motion to compel)

Defendant makes the following good-faith effort to respond to Interrogatory No. 5. Defendant preserves an objection based on broadness, vagueness, and ambiguity to the extent that Defendant has the wrong understanding of the Interrogatory 5, which incorporates the definition of EPC Materials, which incorporates all materials referenced in the Complaint. *See Funk v. Pinnacle Health Facilities XXXII, LP*, No. 17-1099-JTM-KGG, 2018 WL 6042762, at \*4 (D. Kan. Nov. 19, 2018). Defendant reserves the right to calculate the burden in terms of time, money, and procedure if Interrogatory No. 5 is seeking something different than Defendant perceives. *Horizon Holdings, L.L.C. v. Genmar Holdings, Inc.*, 209 F.R.D. 208, 213 (D. Kan. 2002)

Without waiving these objections, Defendant states the following:

Denise Yates and Nicole Yates did not, between themselves, discuss EPC Materials until Nicole Yates resigned from EPC and became a member of Yates & Yates. Communications following this event were for the purpose of obtaining legal advice and not for use in their business.

Denise Yates and Nicole Yates cannot recall communicating with anyone about the records that Denise Yates or Nicole Yates “used or obtained.” (language in the definition of EPC Materials)

Defendants had the following communications with other persons regarding EPC Materials (not about what Denise Yates or Nicole Yates obtained):

Communication with current and prior counsel for EPC: Various dates known to EPC counsel.

Communication with mediator: Various dates, during 11/9/2021 mediation (teleconference) and during subsequent phone calls, subject to confidentiality agreement.

Communication with Complete Legal: 12/21/21 to 12/28/21 and ongoing; content of communication is confidential pursuant to agreement of the parties; the general content is the folders and files (size, structure) on Ms. Denise Yates’ laptop.

Communication with Teresa Benson: 11/3/21; Ms. Benson told Ms. Denise Yates that she has all of her EPC forms. She obtained them when working for EPC and when working for Avanti (which acquired EPC forms when EPC sold The Locale to Avanti); 12/20/21, notes and information protected as attorney work product.

Communication with Robin Jackson: 9/10/21; notes and information protected as attorney work product.

Communication with Kelly Clark: Unknown dates; discussion between Denise Yates and Kelly Clark about how EPC built a financial summary template based off of a copy of a

NorthPoint financial form. 10/29/21 and 11/1/21; notes and information protected as attorney work product.

Communication with Jenna Patterson: Unknown date; approximately one discussion between Denise Yates and Jenna Patterson about how EPC built a financial summary template based off of a copy of a NorthPoint financial form.

Communication with Alan Waterman: 11/29/21; notes and information protected as attorney work product.

Communication with John Geither: 12/20/21; notes and information protected as attorney work product.

Communication with Kerry Mattson: 11/29/21; notes and information protected as attorney work product.

Communication with Michele Antenopolous: 12/20/21; notes and information protected as attorney work product.

**INTERROGATORY NO. 6:** Identify all efforts taken by Yates & Yates to ensure that a Former EPC Employee would not, or did not, use or disclose any EPC Materials in the course and scope of their duties as employees of Yates & Yates, and the date on which each such action was taken.

**RESPONSE:**

Defendant objects to Interrogatory No. 6 because of the vagueness, ambiguity, and broadness of the reference to EPC Materials, a 229-word definition that ultimately incorporates “other” information about EPC, its customers, and its suppliers and “any materials referenced in the Complaint.” *See Funk v. Pinnacle Health Facilities XXXII, LP*, No. 17-1099-JTM-KGG, 2018 WL 6042762, at \*4 (D. Kan. Nov. 19, 2018). In *Funk*, an interrogatory made reference to an overly broad interrogatory definition. The Court stated that it “sympathizes that the discovery request, as worded, is extremely broad.” *Id.* Here, the definition of EPC Materials includes (*emphasis supplied*):

“EPC Materials” shall mean any materials that Denise Yates used or obtained by virtue of working for EPC or from another current or former employee of EPC to the extent that person obtained the materials by virtue of working for EPC, whether or not in written or recorded form, concerning the business or affairs of EPC, including the following: (a) EPC-created proprietary costing tools, project development tools, solutions, software,

templates, calculators, spreadsheets, proformas, plans, designs or other tools utilized by EPC to assist in the conduct of its business; (b) customer lists, customer preferences and requirements, customer communications regarding proposed or pending projects, and customer contacts; (c) bids, proposals, pricing, and project and design strategy; (d) sales pipeline data, potential contract value and project probability information; (e) *business plans, financial information*, budget information and tools, revenue reports, and accounting documents; and (f) *other nonpublic business information about EPC, its customers and its suppliers (in whatever form such information may exist)*. This includes derivatives of any such materials (including but not limited to notes, photographs, print-outs, etc.) in any form, such as hard copies, electronic files (including but not limited to files on computers, tablets, handheld electronic devices, external storage devices or media, drives, or cloud account storage media such as Box, Google Docs, Evernote, Dropbox, etc.), text messages, or emails. This specifically includes *any materials referenced in the Complaint*.

Defendant also objects to the extent this interrogatory seeks information protected by attorney-client privilege or contained within documents protected as work product.

Finally, Defendant states that Denise Yates has not signed a non-compete agreement, confidentiality agreement or employee handbook for EPC.

Without waiving these objections, and based on Defendant's understanding of the question, Defendant states that the efforts include:

Defendant had its attorneys communicate on multiple occasions with EPC's past and present counsel to identify what information should not be used or disclosed, even though EPC's attorneys were dismissive of these questions. [See Doc. 23-4, p. 4, from Defendant's counsel: "Please ... describe the records that EPC contends are trade secret ... We have offered to enter a protective order-type agreement in which the parties would agree to not disclose information about each other to third parties."] [Email of 9/27/21 from EPC counsel: "Respectfully, I do not think it is productive to go back and forth with you about whether these documents are trade secrets."]

Defendant's counsel received confirmation from EPC counsel [email dated 10/27/21] that stated:

We are absolutely not attempting to restrict Ms. Yates from "using any general knowledge of the trade," and we do not believe the proposed definition of "Alleged Proprietary and Trade Secret Information of EPC" could be interpreted to be that broad. In fact, it refers specifically to "documents, electronic files and information of EPC," which would not include data obtained from "public records, brokers, and market research reports."

Defendant does not believe any EPC information that was or is considered confidential by Defendant Denise Yates has been used to benefit Yates & Yates. (except for in the defense of this lawsuit)

Defendant has not used either of the two documents that EPC has identified as trade secret: “225 Proposed Market Rent” and “Asset Management Vision Traction Organizer.” [email dated 9/27/21]

**INTERROGATORY NO. 7:** Identify each and every document that is, or at any time has been, in the custody, control or possession of Yates & Yates that constitutes or is comprised, in whole or in part, of EPC Materials. This interrogatory specifically includes any EPC Materials referenced in the Complaint.

**RESPONSE:**

Defendant objects to Interrogatory No. 7, first, because of the vagueness, ambiguity, and broadness of the reference to EPC Materials, a 229-word definition that ultimately incorporates “other” information about EPC, its customers, and its suppliers and “any materials referenced in the Complaint.” See *Funk v. Pinnacle Health Facilities XXXII, LP*, No. 17-1099-JTM-KGG, 2018 WL 6042762, at \*4 (D. Kan. Nov. 19, 2018).

Defendant would have a massive burden in terms of time, money, and procedure to answer this question with precision. *Horizon Holdings, L.L.C. v. Genmar Holdings, Inc.*, 209 F.R.D. 208, 213 (D. Kan. 2002).

- As written, it appears to require a human eye and/or computer-assisted inspection of each Yates & Yates document to ensure that no boilerplate language, categories, or Excel formulas could match anything within EPC Materials (which by definition include un-written and un-recorded information). As Defendant’s counsel explained to EPC’s counsel, an analysis of the files’ metadata (last accessed / last modified / created) will not be sufficient to answer questions like this. [email from Defendant’s counsel, 12/23/21]
- As written, it appears to ask for every document from the 2000s and 2010s in the AOL email account of Denise Yates, which she previously used for work for EPC and its affiliated companies. The parties have agreed for counsel to search email accounts. [Doc. 45, p. 6, section C] EPC’s counsel stated in an email of 12/20/21: “It honestly never occurred to me that Denise Yates would have 20-year old communication with EPC’s clients.” EPC is requested to narrow the interrogatory so that it is not overly broad and burdensome.

Defendant objects to Interrogatory No. 7 because it seeks irrelevant information. For example, the first two documents in the Yates & Yates initial disclosures are presentations by brokers with financial information of EPC and its affiliated companies. This falls into the definition of EPC Materials including: customer communications regarding proposed or pending products, proposals, financial information, etc. However, the dissemination of such information by

brokers indicates that trade secrets protections do not apply. Defendant requests that EPC narrow this Interrogatory to seek information relevant to the trade secrets, unjust enrichment, or Lanham Act claims it has pleaded. Rule 26(b) limits the scope of discovery to what is relevant to claims or defenses.

Defendant also objects to the extent this interrogatory seeks information protected by attorney-client privilege or contained within documents protected as work product.

Finally, Defendant states that Denise Yates has not signed a non-compete agreement, confidentiality agreement or employee handbook for EPC.

Without waiving these objections, Defendant states the following:

Defendant discovered on 12/27/21 that Nicole Yates (who resigned effective 7/31/21) still has access and control over the EPC Real Estate Group facebook page.

Defendant's owners Denise Yates and Nicole Yates each have customer contacts in their cell phones.

If Denise Yates ever re-saved an EPC template as a Yates & Yates file, she cannot identify the document from memory. Ms. Denise Yates has been requested by EPC to not perform computer searches until Complete Legal makes a copy of her computer (11:30 a.m. on 12/28/21).

Defendant is in possession of multiple proformas that were sent to her by third parties and that are not derived from EPC proformas. She is willing to share those with Plaintiff with information such as her client's name redacted.

**INTERROGATORY NO. 8:** Identify each EPC Client with whom Yates & Yates, or anyone acting on behalf of Yates & Yates, has had any Communication, directly or indirectly, at any time from January 1, 2021 to the present, and for each such EPC Client, identify each such Communication. This request includes Communication over the phone, in person, by text message, and/or by email.

**RESPONSE:**

Defendant objects to the extent this interrogatory seeks the identity of work product documents or attorney-client privileged information contained within related documents. In addition, Defendant states that Denise Yates has not signed a non-compete agreement, confidentiality agreement or employee handbook for EPC.

Defendant recalls the following regarding the development/management clients of EPC:

Josh Woodbury

Last known home address: Unknown

Telephone number: 801-485-7770

Date of Communication: 4/22/21 to 4/23/21

Location of Communication: Email

Identity of Witnesses: Denise Yates, Josh Woodbury

Identity of Related Documents: Emails in document production

Full Description of Event, Communication, Omission: No longer with EPC and response

Clint Feeley

Last known home address: Unknown

Telephone number: 801-485-7770

Date of Communication: May 2021

Location of Communication: Phone call

Identity of Witnesses: Denise Yates, Clint Feeley

Identity of Related Documents: None

Full Description of Event, Communication, Omission: Mr. Feeley called Ms. Denise Yates looking for financial information; Ms. Yates said she was no longer affiliated with EPC.

Jeff Smith

Last known home address: Unknown

Telephone number: 816.569.1441 Kansas City office

Date of communication: 4/22/21

Location of Communication: Email

Identity of Witnesses: Denise Yates, Jeff Smith

Identity of Related Documents: Email

Full Description of Event, Communication, Omission: No longer affiliated with EPC

Date of communication: June 2021

Location of Communication: Phone call

Identity of Witnesses: Denise Yates, Jeff Smith

Identity of Related Documents: n/a

Full Description of Event, Communication, Omission: Discussing hotel

Date of communication: 10/3/21

Location of Communication: Sat next to each other on flight

Identity of Witnesses: Denise Yates, Jeff Smith

Identity of Related Documents: n/a

Full Description of Event, Communication, Omission: Various topics

Jeff Turk

Last known home address: Unknown

Telephone number: 816.569.1441 Kansas City office

Date of Communication: May 2021

Location of Communication: phone call

Identity of Witnesses: Denise Yates, Jeff Turk  
Identity of Related Documents: n/a  
Full Description of Event, Communication, Omission: Interested in meeting personal friend that is an architect

Date of Communication: 5/24/21  
Location of Communication: Email  
Identity of Witnesses: Denise Yates, Jeff Turk  
Identity of Related Documents: Email  
Full Description of Event, Communication, Omission: Introduction of Mr. Turk and the friend of Ms. Yates

#### Julie Andrews

Last known home address: Unknown

Telephone number: (816) 741-8540

Date of Communication: 4/22/21  
Location of Communication: Emails  
Identity of Witnesses: Denise Yates, Julie Andrews  
Identity of Related Documents: Emails  
Full Description of Event, Communication, Omission: No longer with EPC and response

Date of Communication: December 2021  
Location of Communication: In person, holiday party at ConvergeKC property  
Identity of Witnesses: Denise Yates, Julie Andrews, her husband  
Identity of Related Documents: n/a  
Full Description of Event, Communication, Omission: Visited with at Holiday Party

#### Richie Benninghoven

Last known home address: Unknown

Telephone number: 816-260-9071

Date of Communication: 4/22/21 and 4/26/21  
Location of Communication: Emails  
Identity of Witnesses: Denise Yates, Richie Benninghoven  
Identity of Related Documents: Email  
Full Description of Event, Communication, Omission: No longer with EPC; response

Date of Communication: April 2021  
Location of Communication: Phone  
Identity of Witnesses: Denise Yates, Richie Benninghoven  
Identity of Related Documents: N/a  
Full Description of Event, Communication, Omission: Catching up with new roles

#### Josh Udelhofen

Last known home address: Unknown

Telephone number: 314-974-5674

Date of Communication: 5/17/21

Location of Communication: Email

Identity of Witnesses: Denise Yates, Josh Udelhofen

Identity of Related Documents: Email

Full Description of Event, Communication, Omission: No longer with EPC

Date of Communication: 5/18/21

Location of Communication: Phone call

Identity of Witnesses: Denise Yates, Josh Udelhofen

Identity of Related Documents: n/a

Full Description of Event, Communication, Omission: Catching up with new roles

Date of Communication: 5/18/21

Location of Communication: Email

Identity of Witnesses: Denise Yates, Josh Udelhofen

Identity of Related Documents: Email

Full Description of Event, Communication, Omission: Thank you follow up to call

Amy Hood

Last known home address: Unknown

Telephone number: (816) 285-3872

Date of Communication: 4/22/21

Location of Communication: Email

Identity of Witnesses: Denise Yates, Amy Hood

Identity of Related Documents: Email

Full Description of Event, Communication, Omission: No longer with EPC (and was never notified by EPC)

Date of Communication: May 2021

Location of Communication: Phone call

Identity of Witnesses: Denise Yates, Amy Hood

Identity of Related Documents: n/a

Full Description of Event, Communication, Omission: Catching up

Date of Communication: 6/3/21

Location of Communication: Email

Identity of Witnesses: Denise Yates, Amy Hood

Identity of Related Documents: Email

Full Description of Event, Communication, Omission: Ms. Hood confirming lunch

Date of Communication: 6/17/21

Location of Communication: In person, Red Door Liberty

Identity of Witnesses: Denise Yates, Amy Hood

Identity of Related Documents: n/a

Full Description of Event, Communication, Omission: Catching up

Date of Communication: 11/18/21  
Location of Communication: Texts  
Identity of Witnesses: Denise Yates, Amy Hood  
Identity of Related Documents: Texts  
Full Description of Event, Communication, Omission: Personal note related to her husband passing, response to text

#### Ora Reynolds

Last known home address: Unknown

Telephone number: 816-455-2500

Date of Communication: 4/22/21

Location of Communication: Email

Identity of Witnesses: Denise Yates, Ora Reynolds

Identity of Related Documents: Email

Full Description of Event, Communication, Omission: No longer with EPC

Date of Communication: December 2021

Location of Communication: In person, holiday party, ConvergeKC property

Identity of Witnesses: Denise Yates, Ora Reynolds, Doug Coleman

Identity of Related Documents: n/a

Full Description of Event, Communication, Omission: Visited with at holiday party

#### Doug Coleman

Last known home address: Unknown

Telephone number: 816-455-2500

Date of Communication: December 2021

Location of Communication: In person, holiday party

Identity of Witnesses: Denise Yates, Ora Reynolds, Doug Coleman

Identity of Related Documents: n/a

Full Description of Event, Communication, Omission: Visited with at holiday party

Date of Communication: 12/12/21

Location of Communication: Email

Identity of Witnesses: Denise Yates, Doug Coleman

Identity of Related Documents: Email

Full Description of Event, Communication, Omission: Followup from conversation at holiday party

#### The Ritchie Group

Date of Communication: 4/22/21

Location of Communication: Email

Identity of Witnesses: Denise Yates, not recalled

Identity of Related Documents: Email

Full Description of Event, Communication, Omission: No longer with EPC

Date of Communication: April 2021  
Location of Communication: Phone call  
Identity of Witnesses: Denise Yates, not recalled  
Identity of Related Documents: n/a  
Full Description of Event, Communication, Omission: Someone called Denise Yates about an EPC project and Denise Yates said she was no longer affiliated with EPC

Pratima Sharma

Last known home address: Unknown

Telephone number: 972-897-6084

Date of Communication: 6/7/21

Location of Communication: Emails

Identity of Witnesses: Denise Yates, Pratima Sharma

Identity of Related Documents: Emails

Full Description of Event, Communication, Omission: No longer with EPC; response

Date of Communication: 6/8/21

Location of Communication: Phone call

Identity of Witnesses: Denise Yates, Pratima Sharma

Identity of Related Documents: n/a

Full Description of Event, Communication, Omission: Follow up from email

**INTERROGATORY NO. 9:** Identify each EPC Client with whom Yates & Yates, or anyone acting on behalf of Yates & Yates, has had any Communication regarding any Former EPC Employee's departure from EPC and/or hire by Yates & Yates, and for each such EPC Client, identify each such Communication. This request includes Communication over the phone, in person, by text message, and/or by email.

**RESPONSE:**

Based on Defendant's understanding of this question, it seeks only communications about Denise Yates or Nicole Yates' departure from EPC or hire (ownership) of Yates & Yates.

Defendant incorporates the objections and answer to Interrogatory No. 8.

**INTERROGATORY NO. 10:** Identify each person, other than retained counsel, with whom Yates & Yates, or anyone acting on behalf of Yates & Yates, has had any Communication and in which EPC, its customers, business or services was discussed or mentioned, and for each such person, identify each such Communication. This request includes Communication over the phone, in person, by text message and/or by email.

**RESPONSE:**

Defendant incorporates the objections and response to Interrogatory No. 5.

Defendant objects to providing information that will reveal privileged information about the investigation for its claims under the Missouri Human Rights Act and Missouri contract law. A list of interviewed witnesses would reveal Defendant's attorneys' mental impressions, conclusions, opinions, and legal theories regarding whether evidence does or does not support certain claims and the pattern of preparation for trial. *See State ex rel. Atchison, Topeka, and Santa Fe Ry. Co. v. O'Malley*, 898 S.W.2d 550, 554-555 (Mo. 1995). Correspondingly, this Interrogatory seeks information relevant to the impending discrimination, retaliation, and contract claims of Defendant – not the claims in the instant case. Rule 26(b) limits the scope of discovery to what is relevant to claims or defenses.

Defendant objects additionally because this interrogatory seeks irrelevant information about its business. The interrogatory is too broad. It would be impossible to answer with any degree of certainty. It has been discussed (in writing) that Yates & Yates is operating using its general knowledge of the trade. Therefore, Yates & Yates communicates every day about the same business or services that EPC is engaged in. Defendant's counsel received confirmation from EPC counsel [email dated 10/27/21] that stated:

We are absolutely not attempting to restrict Ms. Yates from “using any general knowledge of the trade,” and we do not believe the proposed definition of “Alleged Proprietary and Trade Secret Information of EPC” could be interpreted to be that broad. In fact, it refers specifically to “documents, electronic files and information of EPC,” which would not include data obtained from “public records, brokers, and market research reports.”

Defendant would have a massive burden in terms of time, money, and procedure to answer this question with precision. *Horizon Holdings, L.L.C. v. Genmar Holdings, Inc.*, 209 F.R.D. 208, 213 (D. Kan. 2002). It appears to require Defendant to review all phone logs, calendar entries, notes, emails, text messages, etc. for the purpose of trying to remember any communication in which Ms. Denise Yates said (for example), “I used to work for EPC.”

This interrogatory seeks information that is irrelevant on its face. *McBride v. Medicalodges, Inc.*, 250 F.R.D. 581, 586 (D. Kan. 2008) This interrogatory seeks information that is not proportional to the needs of the case. FRCP 26(b); *Norwood v. United Parcel Serv., Inc.*, No.

19-2496-DDC, 2020 WL 6196149, at \*1 (D. Kan. Oct. 22, 2020), objections overruled, No. 19-2496-DDC-JPO, 2021 WL 75641 (D. Kan. Jan. 8, 2021).

This interrogatory seeks information to support claims that were removed from the Plaintiff's complaint. Defendants are not being sued for breach of a non-compete agreement. With its First Amended Complaint, EPC removed allegations that Ms. Yates personally signed a confidentiality agreement that contained non-competition language. [See Doc. 13, ¶¶ 18, 60; compare Doc. 1, ¶ 21]. With its First Amended Complaint, EPC removed its Breach of Contract Claim; specifically the non-compete allegations in Doc. 1, ¶ 97, and the document attached as Exhibit A after Defendants questioned its authenticity.

Without waiving this objection, Defendant states that Nicole Yates and Denise Yates both recall speaking with Brendon O'Leary about EPC potentially hiring Yates & Yates to provide services to EPC. The dates of these conversations is not presently recalled, but Defendant will continue looking for related records.

Nicole Yates and Denise Yates have told many people that they used to work for EPC.

**INTERROGATORY NO. 11:** Identify each person with whom Yates & Yates and/or any of the Former EPC Employees has communicated for the purpose of doing business with, or potentially doing business with, Yates & Yates, and include the date(s) of such communication.

**RESPONSE:**

Defendant objects to Interrogatory No. 11 based on relevance. This interrogatory requests information for which the relevancy is not readily apparent. *McBride v. Medicalodges, Inc.*, 250 F.R.D. 581, 586 (D. Kan. 2008) This Interrogatory has nothing to do with EPC, communications about EPC, or the broadly defined EPC Materials.

There is no non-compete agreement here. With its First Amended Complaint, EPC removed allegations that Ms. Yates personally signed a confidentiality agreement that contained non-competition language. [See Doc. 13, ¶¶ 18, 60; compare Doc. 1, ¶ 21]. With its First Amended Complaint, EPC removed its Breach of Contract Claim; specifically the non-compete allegations in Doc. 1, ¶ 97. Rule 26(b) limits the scope of discovery to what is relevant to claims or defenses.

Additionally, the intrusion into Defendant's clients and potential clients would be of such marginal relevance that the potential harm occasioned by discovery would outweigh the ordinary presumption in favor of broad disclosure. *Horizon Holdings, L.L.C. v. Genmar Holdings, Inc.*, 209 F.R.D. 208, 214 (D. Kan. 2002). Yates & Yates' clients and potential clients do not need to be revealed to EPC.

Defendant objects to this interrogatory because it seeks information that is not proportional to the needs of the case. FRCP 26(b)(1). *Norwood v. United Parcel Serv., Inc.*, No. 19-2496-DDC,

2020 WL 6196149, at \*1 (D. Kan. Oct. 22, 2020), objections overruled, No. 19-2496-DDC-JPO, 2021 WL 75641 (D. Kan. Jan. 8, 2021).

Ms. Yates was discharged and is free to compete with EPC and moreover is required to mitigate her damages under the Missouri Human Rights Act.

**INTERROGATORY NO. 12:** Identify all weekly, monthly, quarterly, and yearly revenues paid to Yates & Yates by each customer identified in Interrogatory No. 11, and further identify all documents which support the aforementioned revenue payments.

**RESPONSE:**

Defendant incorporates the objections to Interrogatory No. 11.

Without waiving these objections, Defendant provides revenue for 2021 by quarter. No revenue was received from any EPC client or was received using any 'trade secret' of EPC, but rather was earned based on general knowledge of the trade:

\$1,500	Q1
\$5,250	Q2
\$34,388	Q3
\$98,905	Q4

Respectfully submitted,

RAHM, RAHM & McVAY, P.C.

/s/ Cristina Olson

Cristina Olson #79005

511 Foster Lane

Warrensburg, MO 64093

(330) 322-3917

cristina@rahmlaw.com

Carrie M. Brous, KS #18157

BROUS LAW LLC

3965 West 83rd Street, #115

Prairie Village, KS 66208

Tel: (913) 209-8596

cbrous@brouslaw.com

**ATTORNEYS FOR DEFENDANTS**

CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2021, the foregoing document was emailed to counsel for Plaintiff, Samantha Monsees (smonsees@fisherphillips.com) and Melody Rayl (mrayl@fisherphillips.com)

          /s/ Cristina Olson            
Cristina Olson  
Attorney for Defendants

# EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

<b>EPC REAL ESTATE GROUP, LLC</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>Case No. 2:21-CV-02383-JWB-JPO</b>
<b>v.</b>	)	
	)	
<b>YATES &amp; YATES, LLC and</b>	)	
<b>DENISE YATES,</b>	)	
	)	
<b>Defendants.</b>	)	

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**Defendant Denise Yates’ Objections and Responses to Plaintiff’s First Request for  
Production of Documents and Things to Defendant Denise Yates**

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**REQUESTS FOR PRODUCTION**

1. All documents identified by you, upon which you relied, or which you reviewed or used in considering and preparing your Initial Disclosures pursuant to Rule 26(a)(1), your Answer to the Complaint, and/or your answers to Plaintiff’s First Set of Interrogatories to Defendant Denise Yates.

**RESPONSE:**

Defendant objects to RFP 1 to the extent it seeks records that are protected as work product and that contain privileged information. Pursuant to the ESI Protocol [Doc. 45, p. 17] a privilege log is not necessary for documents comprising attorney-client communications and/or attorney work product dated after 4/27/21.

Defendant also objects based on relevance and over-broadness to the extent this RFP seeks production of files on Ms. Denise Yates’ laptop computer, over which counsel reviewed the filenames and created/accessed/modified metadata. The production of these records is governed by the ESI protocol. [Doc. 45, pp. 3-6]

Without waiving this objection, Defendant provides:

- Initial disclosure records, D00001-00282
- Yates & Yates bio
- Denise and Nicole Yates social media posts

- Emails from Denise Yates describing new role [to be produced as soon as possible, considering that Plaintiff requested no document search to be done on Defendant Denise Yates' computer until the mirror image of the device is made, 11:30 a.m. on Dec. 28 – see email dated 12/23/21] and that emails are to be produced in a TIFF format rather than PDF or native format (email dated 12/23/21)

Defendant is not currently providing copies of emails and attachments forwarded from the @epcrealestate.com email account to the AOL account because these have been produced by Plaintiff.

2. Produce for copying and inspection any and all Devices and Storage Media you have used since January 1, 2021, for sending or receiving any form of communication (expressly including email and text messages) or for creating, modifying or storing Documents relating to the business of EPC or the business of Yates & Yates. In lieu of delivering any such device(s) directly to EPC, you may elect to make delivery to a neutral third party as mutually agreed by the parties for the purpose of forensic imaging, examination and production of documents pursuant to the ESI Protocol filed in this case.

**RESPONSE:**

Defendant has started this process with her laptop and jump drive. Defendant objects to this request to the extent that it conflicts with the negotiated ESI protocol, which excludes cell phones [Doc. 45, p. 2]

3. All Documents related to any EPC Client, including but not limited to client contact information, customer and prospect lists or information, financial documents, product or service information, presentations, invoices, payments received and all Communications with or about any EPC Client.

**RESPONSE:**

Defendant objects to RFP 3 because it seeks irrelevant information about third parties who are not litigants. The request is over-broad, vague and ambiguous. *See Funk v. Pinnacle Health Facilities XXXII, LP*, No. 17-1099-JTM-KGG, 2018 WL 6042762, at \*4 (D. Kan. Nov. 19, 2018).

This RFP appears to require not only what Denise Yates has in her possession from working for EPC and its affiliated companies, but also to require Denise Yates to update this discovery response if she engages in business with a former EPC Client. (Note: the definition of EPC Customer includes those with whom Denise Yates had contact during her employment with EPC. This includes past customers.)

In *Westgate Resorts, Ltd. v. Wesley Financial Group, LLC*, Case No. 3:20-cv-00599 (M.D. Tenn. – December 1, 2020), which was a trade secrets and Lanham Act case, the Court addressed whether a party should reveal customers of one party to the other party (in the context of a discovery dispute over an Attorney Eyes Only designation). The Court said it was “especially concerned about the injury to these nonparties, who have no part and no representation in this lawsuit.” The Court ultimately limited disclosure of customer information to a few who would be the “best source of data regarding financial loss” to the party seeking the information.

Defendant’s burden in terms of time, money, and procedure would be high. *Horizon Holdings, L.L.C. v. Genmar Holdings, Inc.*, 209 F.R.D. 208, 213 (D. Kan. 2002) This RFP is asking Defendant to disclose information about a third party who would trust Defendant with confidential information.

To the extent this RFP seeks information acquired through the Yates & Yates business, it seeks irrelevant information that is not proportional to the needs of the case. FRCP 26(b)(1). There is no non-compete agreement or claim. With its First Amended Complaint, EPC removed allegations that Ms. Yates personally signed a confidentiality agreement that contained non-competition language. [See Doc. 13, ¶¶ 18, 60; compare Doc. 1, ¶ 21]. With its First Amended Complaint, EPC removed its Breach of Contract Claim; specifically the non-compete allegations in Doc. 1, ¶ 97, and the document attached as Exhibit A after Defendants questioned its authenticity. To the extent the RFP seeks information to support an unjust enrichment claim, Defendant objects to the discovery because “a claim for unjust enrichment is grounded in equity,” *Marlin Oil Corp. v. Lurie*, 417 F. App’x 740, 743 (10th Cir. 2011), and discovery on this clients’ records (for the purpose of proving unjust enrichment damages) is better handled at a later timeframe, when the issues surrounding liability and bad faith have already been litigated.

Defendant objects to the extent this RFP seeks work product or records containing privileged information. Also, Defendant objects based on relevancy and over-broadness because there is no limitation on whether the origin of the documents was public record. For example, Defendant has market research reports that might be responsive based on Defendant’s understanding of the RFP.

Without waiving these objections, to the extent this RFP seeks information that Defendant acquired from EPC, Defendant is in the process of producing records from her computer through Complete Legal, and will follow the negotiated ESI protocol.

It is Defendant's understanding from an email with EPC's counsel (12/20/21) that this RFP is narrowed to include only emails from 1/1/2018 to the present.

Defendant will produce emails responsive to this request. These will be produced as soon as possible, considering that Plaintiff requested no document search to be done on Defendant Denise Yates' computer until the mirror image of the device is made, 11:30 a.m. on Dec. 28 – see email dated 12/23/21 and that emails are to be produced in a TIFF format rather than PDF or native format {email dated 12/23/21)

4. All emails, including attachments, or calendar invitations sent to you from any EPC email address (i.e. < \_\_\_\_\_@epcrealestate.com >) during the period January 1, 2021 through the present.

**RESPONSE:**

Defendant will produce emails responsive to this request. These will be produced as soon as possible, considering that Plaintiff requested no document search to be done on Defendant Denise Yates' computer until the mirror image of the device is made, 11:30 a.m. on Dec. 28 – see email dated 12/23/21 and that emails are to be produced in a TIFF format rather than PDF or native format {email dated 12/23/21)

Defendant is not currently planning to provide copies of emails and attachments forwarded from the @epcrealestate.com email account to the AOL account because these have been produced by Plaintiff.

5. All Documents evidencing, constituting, or relating to Communications during the period April 14, 2021 and the present, by and between you and any person who was at the time of the communication an employee of EPC. This request would not include communication of a strictly personal nature but would include communication related to or mentioning either EPC or Yates & Yates.

**RESPONSE:**

Defendant objects to the extent this RFP seeks work product or records containing privileged information. Defendant objects to an ongoing obligation to keep Plaintiff informed about who is

interviewed in preparation for litigation in Missouri. Under Missouri law, a list of interviewed witnesses would reveal Defendant's attorneys' mental impressions, conclusions, opinions, and legal theories regarding whether evidence does or does not support certain claims and the pattern of preparation for trial. *See State ex rel. Atchison, Topeka, and Santa Fe Ry. Co. v. O'Malley*, 898 S.W.2d 550, 554-555 (Mo. 1995).

Defendant objects because this RFP seeks information not relevant on its face to the claims and defenses in this case. *McBride v. Medicalodges, Inc.*, 250 F.R.D. 581, 586 (D. Kan. 2008). Rule 26(b) limits the scope of discovery to what is relevant to claims or defenses. Defendant is not sure what cause of action these records would support.

Defendant objects to the extent this RFP seeks work product or records containing privileged information. In particular, Defendant invokes work product protection over attorney notes because (1) the materials sought to be protected are documents or tangible things; (2) they were prepared in anticipation of litigation or for trial; and (3) they were prepared by or for a party or a representative of that party. *AKH Co. v. Universal Underwriters Ins. Co.*, 300 F.R.D. 684, 688 (D. Kan. 2014); *see also Pipeline Prods., Inc. v. Madison Companies, LLC*, No. 15-4890-KHV-ADM, 2019 WL 3973955, at \*5 (D. Kan. Aug. 22, 2019) (Draft non-party affidavits and communications with counsel relating to those draft affidavits are classic work product.); *Zapata v. IBP, Inc.*, 175 F.R.D. 574, 576 (D. Kan. 1997); *Ryall v. Appleton Elec. Co.*, 153 F.R.D. 660, 662 (D. Colo. 1994) (denying motion to compel)

Defendant objects because this RFP seeks communications that do not constitute "previous statement" of Plaintiff (i.e., they are not binding on the company). FRCP 26(b)(3)(c).

Without waiving these objections, Defendant states that Denise Yates and Nicole Yates have not told anyone from EPC to quit their jobs.

6. All Documents, Communications and any other materials in your possession, custody, or control reflecting or referring to any direct or indirect contact with any EPC Client (including any such entity or person's employees or agents).

**RESPONSE:**

Defendant objects to this RFP based on relevance. This RFP requests information for which the relevancy is not readily apparent. *McBride v. Medicalodges, Inc.*, 250 F.R.D. 581, 586 (D. Kan. 2008) The definition of EPC Customer/Client is broad enough to include anyone with whom Denise Yates had contact with over 17 years – including former clients. Therefore, this RFP is

not sufficiently limited to EPC, communications about EPC, or the broadly defined EPC Materials.

There is no non-compete agreement here. With its First Amended Complaint, EPC removed allegations that Ms. Yates personally signed a confidentiality agreement that contained non-competition language. [See Doc. 13, ¶¶ 18, 60; compare Doc. 1, ¶ 21]. With its First Amended Complaint, EPC removed its Breach of Contract Claim; specifically the non-compete allegations in Doc. 1, ¶ 97. Rule 26(b) limits the scope of discovery to what is relevant to claims or defenses.

Additionally, the intrusion into Defendant's clients and potential clients (with an ongoing obligation to update this response) would be of such marginal relevance that the potential harm occasioned by discovery would outweigh the ordinary presumption in favor of broad disclosure. *Horizon Holdings, L.L.C. v. Genmar Holdings, Inc.*, 209 F.R.D. 208, 214 (D. Kan. 2002). Yates & Yates' clients and potential clients do not need to be revealed to EPC.

Defendant objects to this interrogatory because it seeks information that is not proportional to the needs of the case. FRCP 26(b)(1). *Norwood v. United Parcel Serv., Inc.*, No. 19-2496-DDC, 2020 WL 6196149, at \*1 (D. Kan. Oct. 22, 2020), objections overruled, No. 19-2496-DDC-JPO, 2021 WL 75641 (D. Kan. Jan. 8, 2021).

Ms. Yates was discharged and is free to compete with EPC and moreover is required to mitigate her damages under the Missouri Human Rights Act.

Defendant objects to the extent this RFP seeks work product or records containing privileged information.

It is Defendant's understanding from an email with EPC's counsel (12/20/21) that this RFP is narrowed to include only emails from 1/1/2018 to the present.

To the extent the RFP seeks information to support an unjust enrichment claim, Defendant objects to the discovery because "a claim for unjust enrichment is grounded in equity," *Marlin Oil Corp. v. Lurie*, 417 F. App'x 740, 743 (10th Cir. 2011), and discovery on this clients' records (for the purpose of proving unjust enrichment damages) is better handled at a later timeframe, when the issues surrounding liability and bad faith have already been litigated.

Without waiving these objections, Defendant will produce emails responsive to this request. These will be produced as soon as possible, considering that Plaintiff requested no document search to be done on Defendant Denise Yates' computer until the mirror image of the device is made, 11:30 a.m. on Dec. 28 – see email dated 12/23/21 and that emails are to be produced in a TIFF format rather than PDF or native format {email dated 12/23/21}

7. All Documents, Communications and any other materials in your possession, custody, or control that reference EPC.

## RESPONSE:

It is Defendant's understanding from an email with EPC's counsel (12/20/21) that this RFP is narrowed to include only emails from 1/1/2018 to the present.

Defendant objects based on relevancy and over-broadness because there is no limitation on whether the origin of the documents was public record. For example, Defendant has market research reports that might be responsive based on Defendant's understanding of the RFP.

Defendant objects to the extent this RFP seeks work product or records containing privileged information. Defendant objects to an ongoing obligation to keep Plaintiff informed about who is interviewed in preparation for litigation in Missouri. Under Missouri law, a list of interviewed witnesses would reveal Defendant's attorneys' mental impressions, conclusions, opinions, and legal theories regarding whether evidence does or does not support certain claims and the pattern of preparation for trial. *See State ex rel. Atchison, Topeka, and Santa Fe Ry. Co. v. O'Malley*, 898 S.W.2d 550, 554-555 (Mo. 1995).

Also, Defendant objects to the extent this seeks information that the parties agreed to keep confidential (e.g., communications with mediator or Complete Legal)

Defendant objects to providing communication between Nicole Yates and Denise Yates to the extent they have shared a common interest in the outcome of this litigation.

Defendant objects to this request to the extent that it may conflict with the negotiated ESI protocol. [Doc. 45]

To the extent this RFP is seeking text messages between Denise Yates, Nicole Yates, and the owners/managers of EPC, Defendant objects because EPC has equal access to these communications. Defendant objects to the burden of producing these in a readable form to the extent EPC is asking her to be the one to shoulder the cost.

Without waiving these objections, Defendant provides

- Yates & Yates bio
- Emails from Denise Yates describing new role [to be produced as soon as possible, considering that Plaintiff requested no document search to be done on Defendant Denise Yates' computer until the mirror image of the device is made, 11:30 a.m. on Dec. 28 – see email dated 12/23/21] and that emails are to be produced in a TIFF format rather than PDF or native format {email dated 12/23/21}

8. All Documents and Communications in your possession, custody or control that constitute or are comprised, in whole or in part, of EPC Materials.

**RESPONSE:**

Defendant objects to this RFP, first, because of the vagueness, ambiguity, and broadness of the reference to EPC Materials, a 229-word definition that ultimately incorporates “other” information about EPC, its customers, and its suppliers and “any materials referenced in the Complaint.” *See Funk v. Pinnacle Health Facilities XXXII, LP*, No. 17-1099-JTM-KGG, 2018 WL 6042762, at \*4 (D. Kan. Nov. 19, 2018).

Defendant would have a massive burden in terms of time, money, and procedure to answer this question with precision. *Horizon Holdings, L.L.C. v. Genmar Holdings, Inc.*, 209 F.R.D. 208, 213 (D. Kan. 2002).

- As written, it appears to require a human eye and/or computer-assisted inspection of each document to determine if any boilerplate language, categories, or Excel formulas could match anything within EPC Materials (which by definition include un-written and un-recorded information). As Defendant’s counsel explained to EPC’s counsel, an analysis of the files’ metadata (last accessed / last modified / created) will not be sufficient to answer questions like this. [email from Defendant’s counsel, 12/23/21]
- As written, it appears to ask for every document from the 2000s and 2010s in the AOL email account of Denise Yates, which she previously used for work for EPC and its affiliated companies. The parties have agreed for counsel to search email accounts. [Doc. 45, p. 6, section C] EPC’s counsel stated in an email of 12/20/21: “It honestly never occurred to me that Denise Yates would have 20-year old communication with EPC’s clients.” EPC is requested to narrow the interrogatory so that it is not overly broad and burdensome.

Defendant objects to RFP 12 because it seeks irrelevant information. For example, the first two documents in the Defendant’s initial disclosures are presentations by brokers with financial information of EPC and its affiliated companies. This falls into the definition of EPC Materials including: customer communications regarding proposed or pending products, proposals, financial information, etc. However, the dissemination of such information by brokers indicates that trade secrets protections do not apply. Defendant requests that EPC narrow this Interrogatory to seek information relevant to the trade secrets, unjust enrichment, or Lanham Act claims it has pleaded. Rule 26(b) limits the scope of discovery to what is relevant to claims or defenses.

Defendant also objects to the extent this RFP seeks information protected by attorney-client privilege or contained within documents protected as work product.

Denise Yates and Nicole Yates have stated in their interrogatory answers that they have customer contacts in their cell phones. Defendants object to the extent this RFP seeks to have them take a screenshot of each contact – that type of work is not proportionate to the needs of the case.

Finally, Defendant states that Denise Yates has not signed a non-compete agreement, confidentiality agreement or employee handbook for EPC.

Without waiving these objections, Defendant states the following:

If Denise Yates ever re-saved an EPC template as a Yates & Yates file, she cannot identify the document from memory. Ms. Denise Yates has been requested by EPC to not perform computer searches until Complete Legal makes a copy of her computer (11:30 a.m. on 12/28/21). If Denise Yates finds a document like this, she will produce it in response to this RFP.

Defendant is in possession of multiple proformas that were sent to her by third parties and that are not derived from EPC proformas. She is willing to share those with Plaintiff with information such as her client's name redacted.

9. All Documents and Communications that evidence or relate to your acquisition, possession, modification, adaptation, utility, value, usefulness, dissemination, use, disclosure, collection or discussion of any EPC Materials. This includes, but is not limited to, any Documents that are derived from, in whole or in part, EPC Materials.

**RESPONSE:**

Defendant incorporates the objections and responses to this RFP because this seeks information about "Documents that are derived from, in whole or in part, EPC Materials."

Defendant also objects to the extent this RFP seeks information protected by attorney-client privilege or contained within documents protected as work product.

Defendant objects to the extent this RFP seeks work product or records containing privileged information. In particular, Defendant invokes work product protection where (1) the materials sought to be protected are documents or tangible things; (2) they were prepared in anticipation of litigation or for trial; and (3) they were prepared by or for a party or a representative of that party. *AKH Co. v. Universal Underwriters Ins. Co.*, 300 F.R.D. 684, 688 (D. Kan. 2014); *see also Pipeline Prods., Inc. v. Madison Companies, LLC*, No. 15-4890-KHV-ADM, 2019 WL 3973955, at \*5 (D. Kan. Aug. 22, 2019) (Draft non-party affidavits and communications with counsel relating to those draft affidavits are classic work product.); *Zapata v. IBP, Inc.*, 175 F.R.D. 574, 576 (D. Kan. 1997); *Ryall v. Appleton Elec. Co.*, 153 F.R.D. 660, 662 (D. Colo. 1994) (denying motion to compel)

Without waiving these objections, Defendant believes that the response to interrogatory No. 11 to Defendant Yates is responsive to what RFP 13 is seeking. Defendant therefore incorporates

the objection and answer to Interrogatory No. 11 and states that the documents identified therein are or have been produced.

10. All cell phone records pertaining to each cell phone used by you from January 1, 2021 to the present to communicate or perform work on behalf of Yates & Yates, showing records of all voice calls, text messages, and other Communications.

**RESPONSE:**

Defendant objects to this RFP based on relevance. This RFP requests information for which the relevancy is not readily apparent. *McBride v. Medicalodges, Inc.*, 250 F.R.D. 581, 586 (D. Kan. 2008) This Interrogatory has nothing to do with EPC, communications about EPC, or the broadly defined EPC Materials.

There is no non-compete agreement or non-solicitation agreement here. With its First Amended Complaint, EPC removed allegations that Ms. Yates personally signed a confidentiality agreement that contained non-competition language. [See Doc. 13, ¶¶ 18, 60; compare Doc. 1, ¶ 21]. With its First Amended Complaint, EPC removed its Breach of Contract Claim; specifically the non-compete allegations in Doc. 1, ¶ 97. Rule 26(b) limits the scope of discovery to what is relevant to claims or defenses.

Additionally, the intrusion into Defendant's clients and potential clients would be of such marginal relevance that the potential harm occasioned by discovery would outweigh the ordinary presumption in favor of broad disclosure. *Horizon Holdings, L.L.C. v. Genmar Holdings, Inc.*, 209 F.R.D. 208, 214 (D. Kan. 2002). Yates & Yates' clients and potential clients do not need to be revealed to EPC.

Also this RFP seeks information protected by attorney-client privilege or contained within documents protected as work product, including when and how long Nicole Yates or Denise Yates talked with their attorneys.

Defendant objects to this interrogatory because it seeks information that is not proportional to the needs of the case. FRCP 26(b)(1). *Norwood v. United Parcel Serv., Inc.*, No. 19-2496-DDC, 2020 WL 6196149, at \*1 (D. Kan. Oct. 22, 2020), objections overruled, No. 19-2496-DDC-JPO, 2021 WL 75641 (D. Kan. Jan. 8, 2021).

Ms. Yates was discharged and is free to compete with EPC and moreover is required to mitigate her damages under the Missouri Human Rights Act.

Defendant's burden in terms of time, money, and procedure would be high. *Horizon Holdings, L.L.C. v. Genmar Holdings, Inc.*, 209 F.R.D. 208, 213 (D. Kan. 2002) If Defendant were to provide responsive information, Defendant would have to hand-redact all calls/texts with counsel or non-relevant calls/texts.

11. All Documents and Communications that evidence, relate to or reference any work performed or Communications by you on behalf of or in the interest of Yates & Yates on or before April 14, 2021.

**RESPONSE:**

Defendant objects to this RFP based on relevance. This RFP requests information for which the relevancy is not readily apparent. *McBride v. Medicalodges, Inc.*, 250 F.R.D. 581, 586 (D. Kan. 2008)

There is no non-compete agreement or non-solicitation agreement here. With its First Amended Complaint, EPC removed allegations that Ms. Yates personally signed a confidentiality agreement that contained non-competition language. [See Doc. 13, ¶¶ 18, 60; compare Doc. 1, ¶ 21]. With its First Amended Complaint, EPC removed its Breach of Contract Claim; specifically the non-compete allegations in Doc. 1, ¶ 97. Rule 26(b) limits the scope of discovery to what is relevant to claims or defenses.

As EPC knows, Brendon O’Leary spoke with Denise Yates and Nicole Yates about EPC in the future potentially hiring Yates & Yates to provide services to EPC. The dates of these conversations is not presently recalled, but Defendant will continue looking for related records.

As EPC knows, as of October 2020, Ms. Denise Yates was given clearly defined roles for EPC and its affiliated companies and paid significantly less than she had been making. If EPC wants to plead that Ms. Yates was restricted from working on her business under the circumstances described above, Defendant will re-evaluate its relevancy objection.

Defendant objects to RFP 15 because it seeks irrelevant information about third parties who are not litigants. The request is over-broad, vague and ambiguous. *See Funk v. Pinnacle Health Facilities XXXII, LP*, No. 17-1099-JTM-KGG, 2018 WL 6042762, at \*4 (D. Kan. Nov. 19, 2018).

In *Westgate Resorts, Ltd. v. Wesley Financial Group, LLC*, Case No. 3:20-cv-00599 (M.D. Tenn. – December 1, 2020), which was a trade secrets and Lanham Act case, the Court addressed whether a party should reveal customers of one party to the other party (in the context of a discovery dispute over an Attorney Eyes Only designation). The Court said it was “especially concerned about the injury to these nonparties, who have no part and no representation in this lawsuit.” The Court ultimately limited disclosure of customer information to a few who would be the “best source of data regarding financial loss” to the party seeking the information.

Defendant's burden in terms of time, money, and procedure would be high. *Horizon Holdings, L.L.C. v. Genmar Holdings, Inc.*, 209 F.R.D. 208, 213 (D. Kan. 2002) This RFP is asking Defendant to disclose information about a third party who would trust Defendant with confidential information.

12. For the period October 1, 2018, to the present, all communication and documents regarding or relating to any strategy, directive, business goal or objective, business plan, marketing plan, or other plan to establish, market, advertise, maintain or promote the work and services of Yates & Yates.

**RESPONSE:**

Defendant objects to this RFP based on relevance. This RFP requests information for which the relevancy is not readily apparent. *McBride v. Medicalodges, Inc.*, 250 F.R.D. 581, 586 (D. Kan. 2008)

There is no non-compete agreement or non-solicitation agreement here. With its First Amended Complaint, EPC removed allegations that Ms. Yates personally signed a confidentiality agreement that contained non-competition language. [See Doc. 13, ¶¶ 18, 60; compare Doc. 1, ¶ 21]. With its First Amended Complaint, EPC removed its Breach of Contract Claim; specifically the non-compete allegations in Doc. 1, ¶ 97. Rule 26(b) limits the scope of discovery to what is relevant to claims or defenses.

As EPC knows, Brendon O'Leary spoke with Denise Yates and Nicole Yates about EPC in the future potentially hiring Yates & Yates to provide services to EPC. The dates of these conversations is not presently recalled, but Defendant will continue looking for related records.

As EPC knows, as of October 2020, Ms. Denise Yates was given clearly defined roles for EPC and its affiliated companies and paid significantly less than she had been making. If EPC wants to plead that Ms. Yates was restricted from working on her business under the circumstances described above, Defendant will re-evaluate its relevancy objection.

Defendant objects to the extent this RFP seeks records containing privileged information or work product records, since the defense of this lawsuit is responsive.

13. All non-privileged Communications regarding or referring to the material facts or allegations set forth in paragraphs 7 through 44 of the Complaint.

**RESPONSE:**

Defendant objects to the extent this RFP seeks work product or records containing privileged information. In particular, Defendant invokes work product protection where (1) the materials sought to be protected are documents or tangible things; (2) they were prepared in anticipation of litigation or for trial; and (3) they were prepared by or for a party or a representative of that party. *AKH Co. v. Universal Underwriters Ins. Co.*, 300 F.R.D. 684, 688 (D. Kan. 2014); *see also Pipeline Prods., Inc. v. Madison Companies, LLC*, No. 15-4890-KHV-ADM, 2019 WL 3973955, at \*5 (D. Kan. Aug. 22, 2019) (Draft non-party affidavits and communications with counsel relating to those draft affidavits are classic work product.); *Zapata v. IBP, Inc.*, 175 F.R.D. 574, 576 (D. Kan. 1997); *Ryall v. Appleton Elec. Co.*, 153 F.R.D. 660, 662 (D. Colo. 1994) (denying motion to compel)

Also, Defendant objects to the extent this seeks information that the parties agreed to keep confidential (e.g., communications with mediator or Complete Legal)

Without waiving these objections, Defendant states that records from her computer and jump drive are being produced pursuant to the ESI protocol; emails are being produced as soon as possible, considering that Plaintiff requested no document search to be done on Defendant Denise Yates' computer until the mirror image of the device is made, 11:30 a.m. on Dec. 28 – see email dated 12/23/21] and that emails are to be produced in a TIFF format rather than PDF or native format (email dated 12/23/21)], and the Yates & Yates brochure is being produced herewith. Additionally, responsive records have been provided in the Initial Disclosures and as exhibits to the court filings.

14. All Documents upon which you have relied or intend to rely in opposing EPC's claims and/or rebutting any of the allegations contained in the Complaint.

**RESPONSE:**

Defendant objects to the extent this RFP seeks work product or records containing privileged information. In particular, Defendant invokes work product protection where (1) the materials sought to be protected are documents or tangible things; (2) they were prepared in anticipation of litigation or for trial; and (3) they were prepared by or for a party or a representative of that party. *AKH Co. v. Universal Underwriters Ins. Co.*, 300 F.R.D. 684, 688 (D. Kan. 2014); *see also Pipeline Prods., Inc. v. Madison Companies, LLC*, No. 15-4890-KHV-ADM, 2019 WL 3973955, at \*5 (D. Kan. Aug. 22, 2019) (Draft non-party affidavits and communications with counsel relating to those draft affidavits are classic work product.); *Zapata v. IBP, Inc.*, 175

F.R.D. 574, 576 (D. Kan. 1997); *Ryall v. Appleton Elec. Co.*, 153 F.R.D. 660, 662 (D. Colo. 1994) (denying motion to compel)

Defendant objects to an ongoing obligation to keep Plaintiff informed about who is interviewed in preparation for litigation in Missouri. Under Missouri law, a list of interviewed witnesses would reveal Defendant's attorneys' mental impressions, conclusions, opinions, and legal theories regarding whether evidence does or does not support certain claims and the pattern of preparation for trial. *See State ex rel. Atchison, Topeka, and Santa Fe Ry. Co. v. O'Malley*, 898 S.W.2d 550, 554-555 (Mo. 1995).

Also, Defendant objects to the extent this seeks information that the parties agreed to keep confidential (e.g., communications with mediator or Complete Legal)

15. All Documents and Communications regarding or reflecting any written or recorded statement, affidavit or declaration made or taken relating to this Lawsuit (including but not limited to sworn and unsworn declarations or affidavits, whether filed or not).

#### **RESPONSE:**

Defendant objects to the extent this RFP seeks work product or records containing privileged information. In particular, Defendant invokes work product protection where (1) the materials sought to be protected are documents or tangible things; (2) they were prepared in anticipation of litigation or for trial; and (3) they were prepared by or for a party or a representative of that party. *AKH Co. v. Universal Underwriters Ins. Co.*, 300 F.R.D. 684, 688 (D. Kan. 2014); *see also Pipeline Prods., Inc. v. Madison Companies, LLC*, No. 15-4890-KHV-ADM, 2019 WL 3973955, at \*5 (D. Kan. Aug. 22, 2019) (Draft non-party affidavits and communications with counsel relating to those draft affidavits are classic work product.); *Zapata v. IBP, Inc.*, 175 F.R.D. 574, 576 (D. Kan. 1997); *Ryall v. Appleton Elec. Co.*, 153 F.R.D. 660, 662 (D. Colo. 1994) (denying motion to compel)

Defendant objects to an ongoing obligation to keep Plaintiff informed about who is interviewed in preparation for litigation in Missouri. Under Missouri law, a list of interviewed witnesses would reveal Defendant's attorneys' mental impressions, conclusions, opinions, and legal theories regarding whether evidence does or does not support certain claims and the pattern of preparation for trial. *See State ex rel. Atchison, Topeka, and Santa Fe Ry. Co. v. O'Malley*, 898 S.W.2d 550, 554-555 (Mo. 1995).

Also, Defendant objects to the extent this seeks information that the parties agreed to keep confidential (e.g., communications with mediator or Complete Legal)

Without waiving this objection, Defendant states that responsive documents have been produced in the Initial Disclosures (e.g., Kerry Mattson's computer screenshots) and that emails will be

produced. [to be produced as soon as possible, considering that Plaintiff requested no document search to be done on Defendant Denise Yates' computer until the mirror image of the device is made, 11:30 a.m. on Dec. 28 – see email dated 12/23/21] and that emails are to be produced in a TIFF format rather than PDF or native format (email dated 12/23/21)]

16. All Documents referenced in or relied upon in making any declaration filed or relied upon in the Lawsuit.

**RESPONSE:**

Defendant objects to the extent this RFP seeks work product or records containing privileged information. In particular, Defendant invokes work product protection where (1) the materials sought to be protected are documents or tangible things; (2) they were prepared in anticipation of litigation or for trial; and (3) they were prepared by or for a party or a representative of that party. *AKH Co. v. Universal Underwriters Ins. Co.*, 300 F.R.D. 684, 688 (D. Kan. 2014); *see also Pipeline Prods., Inc. v. Madison Companies, LLC*, No. 15-4890-KHV-ADM, 2019 WL 3973955, at \*5 (D. Kan. Aug. 22, 2019) (Draft non-party affidavits and communications with counsel relating to those draft affidavits are classic work product.); *Zapata v. IBP, Inc.*, 175 F.R.D. 574, 576 (D. Kan. 1997); *Ryall v. Appleton Elec. Co.*, 153 F.R.D. 660, 662 (D. Colo. 1994) (denying motion to compel)

Defendant objects to an ongoing obligation to keep Plaintiff informed about who is interviewed in preparation for litigation in Missouri. Under Missouri law, a list of interviewed witnesses would reveal Defendant's attorneys' mental impressions, conclusions, opinions, and legal theories regarding whether evidence does or does not support certain claims and the pattern of preparation for trial. *See State ex rel. Atchison, Topeka, and Santa Fe Ry. Co. v. O'Malley*, 898 S.W.2d 550, 554-555 (Mo. 1995).

Also, Defendant objects to the extent this seeks information that the parties agreed to keep confidential (e.g., communications with mediator or Complete Legal)

Without waiving these objections, Defendant states that the declarations filed as Doc. 8-1 and Doc. 23-1 are supported by Denise Yates' memory and records that are identified within the declarations. These were uploaded as exhibits, available on the internet, or already in the possession of EPC. The current brochure is produced herewith.

17. All Documents referenced in or relied upon in any other filing in this Lawsuit.

**RESPONSE:**

Defendant objects to the extent this RFP seeks work product or records containing privileged information – including legal research memos and notes. In particular, Defendant invokes work product protection where (1) the materials sought to be protected are documents or tangible things; (2) they were prepared in anticipation of litigation or for trial; and (3) they were prepared by or for a party or a representative of that party. *AKH Co. v. Universal Underwriters Ins. Co.*, 300 F.R.D. 684, 688 (D. Kan. 2014); *see also Pipeline Prods., Inc. v. Madison Companies, LLC*, No. 15-4890-KHV-ADM, 2019 WL 3973955, at \*5 (D. Kan. Aug. 22, 2019) (Draft non-party affidavits and communications with counsel relating to those draft affidavits are classic work product.); *Zapata v. IBP, Inc.*, 175 F.R.D. 574, 576 (D. Kan. 1997); *Ryall v. Appleton Elec. Co.*, 153 F.R.D. 660, 662 (D. Colo. 1994) (denying motion to compel)

Without waiving these objections, Defendant states that records from her computer and jump drive are being produced pursuant to the ESI protocol; emails are being produced as soon as possible, considering that Plaintiff requested no document search to be done on Defendant Denise Yates' computer until the mirror image of the device is made, 11:30 a.m. on Dec. 28 – see email dated 12/23/21] and that emails are to be produced in a TIFF format rather than PDF or native format (email dated 12/23/21)], and the Yates & Yates brochure is being produced herewith.

18. All Documents regarding or evidencing, in whole or in part, the Brochure identified in paragraph 40 of the Complaint, expressly including any and all drafts of the Brochure, subsequent versions of the Brochure, and all Communications with any other person in which the Brochure is discussed, attached, delivered or otherwise mentioned.

#### **RESPONSE:**

Defendant objects to the extent this RFP seeks work product or records containing privileged information – including legal research memos and notes on Lanham Act claims. In particular, Defendant invokes work product protection where (1) the materials sought to be protected are documents or tangible things; (2) they were prepared in anticipation of litigation or for trial; and (3) they were prepared by or for a party or a representative of that party. *AKH Co. v. Universal Underwriters Ins. Co.*, 300 F.R.D. 684, 688 (D. Kan. 2014); *see also Pipeline Prods., Inc. v. Madison Companies, LLC*, No. 15-4890-KHV-ADM, 2019 WL 3973955, at \*5 (D. Kan. Aug. 22, 2019) (Draft non-party affidavits and communications with counsel relating to those draft affidavits are classic work product.); *Zapata v. IBP, Inc.*, 175 F.R.D. 574, 576 (D. Kan. 1997); *Ryall v. Appleton Elec. Co.*, 153 F.R.D. 660, 662 (D. Colo. 1994) (denying motion to compel)

Defendant states that Denise Yates has not signed a non-compete agreement, confidentiality agreement or employee handbook for EPC.

To the extent this RFP is making use of the discovery process to learn the identity of the Yates & Yates clients and potential clients, this RFP seeks irrelevant information that is not proportional to the needs of the case. FRCP 26(b)(1); *Norwood v. United Parcel Serv., Inc.*, No. 19-2496-

DDC, 2020 WL 6196149, at \*1 (D. Kan. Oct. 22, 2020), objections overruled, No. 19-2496-DDC-JPO, 2021 WL 75641 (D. Kan. Jan. 8, 2021). Also, this seeks to interrupt the acquisition of potential clients. It is the responsibility of Denise Yates (who has claims against EPC and its affiliated companies) to mitigate damages and earn a living.

In *Westgate Resorts, Ltd. v. Wesley Financial Group, LLC*, Case No. 3:20-cv-00599 (M.D. Tenn. – December 1, 2020), which was a trade secrets and Lanham Act case, the Court addressed whether a party should reveal customers of one party to the other party (in the context of a discovery dispute over an Attorney Eyes Only designation). The Court said it was “especially concerned about the injury to these nonparties, who have no part and no representation in this lawsuit.” The Court ultimately limited disclosure of customer information to a few who would be the “best source of data regarding financial loss” to the party seeking the information. In this case, the contacts identified in Denise Yates’ answer to Interrogatory No. 8 are the best source of information regarding whether anyone was confused or misled by the brochure.

Additionally, the intrusion into Defendant’s clients and potential clients (with an ongoing obligation to update this response) would be of such marginal relevance that the potential harm occasioned by discovery would outweigh the ordinary presumption in favor of broad disclosure. *Horizon Holdings, L.L.C. v. Genmar Holdings, Inc.*, 209 F.R.D. 208, 214 (D. Kan. 2002). Yates & Yates’ clients and potential clients do not need to be revealed to EPC.

Defendant objects to this RFP because it seeks information that is not proportional to the needs of the case. FRCP 26(b)(1). *Norwood v. United Parcel Serv., Inc.*, No. 19-2496-DDC, 2020 WL 6196149, at \*1 (D. Kan. Oct. 22, 2020), objections overruled, No. 19-2496-DDC-JPO, 2021 WL 75641 (D. Kan. Jan. 8, 2021).

Also, Defendant objects to the extent this seeks information that the parties agreed to keep confidential (e.g., communications with mediator or Complete Legal)

Without waiving these objections, Defendant states that emails from Denise Yates describing new role and attaching the original brochure will be produced as soon as possible, considering that Plaintiff requested no document search to be done on Defendant Denise Yates’ computer until the mirror image of the device is made, 11:30 a.m. on Dec. 28 – see email dated 12/23/21] and that emails are to be produced in a TIFF format rather than PDF or native format (email dated 12/23/21). The current brochure is produced herewith.

19. All Documents regarding or evidencing, in whole or in part, any Yates & Yates marketing materials in which EPC projects or clients are depicted or mentioned, expressly

including any and all drafts of such materials and all Communications with any other person in which such materials are discussed, attached, delivered or otherwise mentioned.

**RESPONSE:**

Defendant incorporates the objections and answer to RFP 18.

20. All Documents and Communications related to this Lawsuit that are received in response to a subpoena, an open records request under the laws of any state, or otherwise from third parties pursuant to a request from you or anyone acting on your behalf.

**RESPONSE:**

Defendant objects to the extent this RFP seeks work product or records containing privileged information. In particular, Defendant invokes work product protection where (1) the materials sought to be protected are documents or tangible things; (2) they were prepared in anticipation of litigation or for trial; and (3) they were prepared by or for a party or a representative of that party. *AKH Co. v. Universal Underwriters Ins. Co.*, 300 F.R.D. 684, 688 (D. Kan. 2014); *see also Pipeline Prods., Inc. v. Madison Companies, LLC*, No. 15-4890-KHV-ADM, 2019 WL 3973955, at \*5 (D. Kan. Aug. 22, 2019) (Draft non-party affidavits and communications with counsel relating to those draft affidavits are classic work product.); *Zapata v. IBP, Inc.*, 175 F.R.D. 574, 576 (D. Kan. 1997); *Ryall v. Appleton Elec. Co.*, 153 F.R.D. 660, 662 (D. Colo. 1994) (denying motion to compel)

Defendant objects to an ongoing obligation to keep Plaintiff informed about who is interviewed in preparation for litigation in Missouri. Under Missouri law, a list of interviewed witnesses would reveal Defendant's attorneys' mental impressions, conclusions, opinions, and legal theories regarding whether evidence does or does not support certain claims and the pattern of preparation for trial. *See State ex rel. Atchison, Topeka, and Santa Fe Ry. Co. v. O'Malley*, 898 S.W.2d 550, 554-555 (Mo. 1995).

Also, Defendant objects to the extent this seeks information that the parties agreed to keep confidential (e.g., communications with mediator or Complete Legal)

Without waiving this objection, Defendant states responsive information has been provided (Woodbury Corp. subpoena) and will be provided.

21. Any report, including all documentation relied upon, from any expert retained by you in this matter.

**RESPONSE:**

Will be produced in accordance with Court's Order.

22. Each insurance agreement under which coverage may be available to satisfy costs of defense and/or part or all of a judgment that may be entered in the Lawsuit or to indemnify or reimburse for payments made to satisfy the judgment.

**RESPONSE:**

Not applicable.

23. Any document you intend to use as an exhibit at any hearing or trial in this matter.

**RESPONSE:**

Will be produced in accordance with Court's Order.

Respectfully submitted,

RAHM, RAHM & McVAY, P.C.

/s/ Cristina Olson

Cristina Olson #79005

511 Foster Lane

Warrensburg, MO 64093

(330) 322-3917

cristina@rahmlaw.com

Carrie M. Brous, KS #18157

BROUS LAW LLC

3965 West 83rd Street, #115

Prairie Village, KS 66208

Tel: (913) 209-8596

cbrous@brouslaw.com

**ATTORNEYS FOR DEFENDANTS**

CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2021, the foregoing document was emailed to counsel for Plaintiff, Samantha Monsees (smonsees@fisherphillips.com) and Melody Rayl (mrayl@fisherphillips.com)

/s/ Cristina Olson

Cristina Olson

Attorney for Defendants

# EXHIBIT D

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

<b>EPC REAL ESTATE GROUP, LLC</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>Case No. 2:21-CV-02383-JWB-JPO</b>
<b>v.</b>	)	
	)	
<b>YATES &amp; YATES, LLC and</b>	)	
<b>DENISE YATES,</b>	)	
	)	
<b>Defendants.</b>	)	

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**Defendant Yates & Yates’ Responses and Objections to Plaintiff’s First Requests for  
Production of Documents and Things to Defendant Yates & Yates, LLC**

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**REQUESTS FOR PRODUCTION**

1. All documents identified by you, upon which you relied, or which you reviewed or used in considering and preparing your Initial Disclosures pursuant to Rule 26(a)(1), your Answer to the Complaint, and/or your answers to Plaintiff’s First Set of Interrogatories to Defendant Yates & Yates.

**RESPONSE:**

Defendant objects to RFP 1 to the extent it seeks records that are protected as work product and that contain privileged information. Pursuant to the ESI Protocol [Doc. 45, p. 17] a privilege log is not necessary for documents comprising attorney-client communications and/or attorney work product dated after 4/27/21.

Defendant also objects based on relevance and over-broadness to the extent this RFP seeks production of files on Ms. Denise Yates’ laptop computer, over which counsel reviewed the filenames and created/accessed/modified metadata. The production of these records is governed by the ESI protocol. [Doc. 45, pp. 3-6]

Without waiving this objection, Defendant provides:

- Initial disclosure records, D00001-00282
- Yates & Yates bio
- Denise and Nicole Yates social media posts

- Emails from Denise Yates describing new role [to be produced as soon as possible, considering that Plaintiff requested no document search to be done on Defendant Denise Yates' computer until the mirror image of the device is made, 11:30 a.m. on Dec. 28 – see email dated 12/23/21] and that emails are to be produced in a TIFF format rather than PDF or native format (email dated 12/23/21)

Defendant is not currently providing copies of emails and attachments forwarded from the @epcrealestate.com email account to the AOL account because these have been produced by Plaintiff.

2. Produce for copying and inspection any and all Devices and Storage Media used by Yates & Yates or a Former EPC Employee since January 1, 2021, for sending or receiving any form of communication (expressly including email and text messages) or for creating, modifying or storing Documents relating to the business of Yates & Yates. In lieu of delivering any such device(s) directly to EPC, you may elect to make delivery to a neutral third party as mutually agreed by the parties for the purpose of forensic imaging, examination and production of documents pursuant to the ESI Protocol filed in this case.

**RESPONSE:**

Defendant has started this process with her laptop and jump drive. Defendant objects to this request to the extent that it conflicts with the negotiated ESI protocol, which excludes cell phones [Doc. 45, p. 2]

3. All Documents related to any EPC Client, including but not limited to client contact information, customer and prospect lists or information, financial documents, product or service information, presentations, invoices, payments received and all Communications with or about any EPC Client.

**RESPONSE:**

Defendant objects to RFP 3 because it seeks irrelevant information about third parties who are not litigants. The request is over-broad, vague and ambiguous. *See Funk v. Pinnacle Health Facilities XXXII, LP*, No. 17-1099-JTM-KGG, 2018 WL 6042762, at \*4 (D. Kan. Nov. 19, 2018).

This RFP appears to require not only what Denise Yates has in her possession from working for EPC and its affiliated companies, but also to require Denise Yates to update this discovery response if she engages in business with a former EPC Client. (Note: the definition of EPC Customer includes those with whom Denise Yates had contact during her employment with EPC. This includes past customers.)

In *Westgate Resorts, Ltd. v. Wesley Financial Group, LLC*, Case No. 3:20-cv-00599 (M.D. Tenn. – December 1, 2020), which was a trade secrets and Lanham Act case, the Court addressed whether a party should reveal customers of one party to the other party (in the context of a discovery dispute over an Attorney Eyes Only designation). The Court said it was “especially concerned about the injury to these nonparties, who have no part and no representation in this lawsuit.” The Court ultimately limited disclosure of customer information to a few who would be the “best source of data regarding financial loss” to the party seeking the information.

Defendant’s burden in terms of time, money, and procedure would be high. *Horizon Holdings, L.L.C. v. Genmar Holdings, Inc.*, 209 F.R.D. 208, 213 (D. Kan. 2002) This RFP is asking Defendant to disclose information about a third party who would trust Defendant with confidential information.

To the extent this RFP seeks information acquired through the Yates & Yates business, it seeks irrelevant information that is not proportional to the needs of the case. FRCP 26(b)(1). There is no non-compete agreement or claim. With its First Amended Complaint, EPC removed allegations that Ms. Yates personally signed a confidentiality agreement that contained non-competition language. [See Doc. 13, ¶¶ 18, 60; compare Doc. 1, ¶ 21]. With its First Amended Complaint, EPC removed its Breach of Contract Claim; specifically the non-compete allegations in Doc. 1, ¶ 97, and the document attached as Exhibit A after Defendants questioned its authenticity. To the extent the RFP seeks information to support an unjust enrichment claim, Defendant objects to the discovery because “a claim for unjust enrichment is grounded in equity,” *Marlin Oil Corp. v. Lurie*, 417 F. App’x 740, 743 (10th Cir. 2011), and discovery on this clients’ records (for the purpose of proving unjust enrichment damages) is better handled at a later timeframe, when the issues surrounding liability and bad faith have already been litigated.

Defendant objects to the extent this RFP seeks work product or records containing privileged information. Also, Defendant objects based on relevancy and over-broadness because there is no limitation on whether the origin of the documents was public record. For example, Defendant has market research reports that might be responsive based on Defendant’s understanding of the RFP.

Without waiving these objections, to the extent this RFP seeks information that Defendant acquired from EPC, Defendant is in the process of producing records from her computer through Complete Legal, and will follow the negotiated ESI protocol.

It is Defendant’s understanding from an email with EPC’s counsel (12/20/21) that this RFP is narrowed to include only emails from 1/1/2018 to the present.

Defendant will produce emails responsive to this request. These will be produced as soon as possible, considering that Plaintiff requested no document search to be done on Defendant Denise Yates' computer until the mirror image of the device is made, 11:30 a.m. on Dec. 28 – see email dated 12/23/21 and that emails are to be produced in a TIFF format rather than PDF or native format {email dated 12/23/21)

4. All Documents evidencing or relating to any bid or proposal for services or any other presentation or solicitation for business provided by Yates & Yates to any EPC Client during the period January 1, 2021 through the present.

**RESPONSE:**

Defendant incorporates the objections to RFP 3.

Without waiving these objections, will produce emails responsive to this request. These will be produced as soon as possible, considering that Plaintiff requested no document search to be done on Defendant Denise Yates' computer until the mirror image of the device is made, 11:30 a.m. on Dec. 28 – see email dated 12/23/21 and that emails are to be produced in a TIFF format rather than PDF or native format {email dated 12/23/21)

5. All Documents evidencing or relating to any payment for services received by Yates & Yates and related to any EPC Client during the period from January 1, 2021 through the present.

**RESPONSE:**

Defendant objects to RFP 5 based on relevance. This RFP requests information for which the relevancy is not readily apparent. *McBride v. Medicalodges, Inc.*, 250 F.R.D. 581, 586 (D. Kan. 2008) The definition of EPC Customer/Client is broad enough to include anyone with whom Denise Yates had contact with over 17 years – including former clients. Therefore, this RFP is not sufficiently limited to EPC, communications about EPC, or the broadly defined EPC Materials.

There is no non-compete agreement here. With its First Amended Complaint, EPC removed allegations that Ms. Yates personally signed a confidentiality agreement that contained non-competition language. [See Doc. 13, ¶¶ 18, 60; compare Doc. 1, ¶ 21]. With its First Amended Complaint, EPC removed its Breach of Contract Claim; specifically the non-compete allegations

in Doc. 1, ¶ 97. Rule 26(b) limits the scope of discovery to what is relevant to claims or defenses.

Additionally, the intrusion into Defendant's clients and potential clients (with an ongoing obligation to update this response) would be of such marginal relevance that the potential harm occasioned by discovery would outweigh the ordinary presumption in favor of broad disclosure. *Horizon Holdings, L.L.C. v. Genmar Holdings, Inc.*, 209 F.R.D. 208, 214 (D. Kan. 2002). Yates & Yates' clients and potential clients do not need to be revealed to EPC.

Defendant objects to this interrogatory because it seeks information that is not proportional to the needs of the case. FRCP 26(b)(1). *Norwood v. United Parcel Serv., Inc.*, No. 19-2496-DDC, 2020 WL 6196149, at \*1 (D. Kan. Oct. 22, 2020), objections overruled, No. 19-2496-DDC-JPO, 2021 WL 75641 (D. Kan. Jan. 8, 2021).

Ms. Yates was discharged and is free to compete with EPC and moreover is required to mitigate her damages under the Missouri Human Rights Act.

Defendant objects to the extent this RFP seeks work product or records containing privileged information.

To the extent the RFP seeks information to support an unjust enrichment claim, Defendant objects to the discovery because "a claim for unjust enrichment is grounded in equity," *Marlin Oil Corp. v. Lurie*, 417 F. App'x 740, 743 (10th Cir. 2011), and discovery on this clients' records (for the purpose of proving unjust enrichment damages) is better handled at a later timeframe, when the issues surrounding liability and bad faith have already been litigated.

6. All Documents relating to the anticipated, proposed, or planned solicitation or acquisition of clients by any Former EPC Employees on behalf of Yates & Yates, including all pre-employment documents regarding potential business to be solicited or serviced by the Former EPC Employees.

**RESPONSE:**

It is noted that the term Former EPC Employee has been given a special definition in the instructions to these RFPs: "Denise Yates and any other person who at one time worked for EPC and subsequently became employed by or began performing work on behalf of Yates & Yates."

The term pre-employment documents is not defined. Therefore, Defendant objects to this RFP based on vagueness or ambiguity of that term. Defendant answers the following with the assumption that it means an employment offer letter.

Defendant objects to RFP 6 based on relevance. This RFP requests information for which the relevancy is not readily apparent. *McBride v. Medicalodges, Inc.*, 250 F.R.D. 581, 586 (D. Kan. 2008) The RFP seeks documents relating to “clients” and is not sufficiently limited to EPC, communications about EPC, or the broadly defined EPC Materials.

There is no non-compete agreement here. With its First Amended Complaint, EPC removed allegations that Ms. Yates personally signed a confidentiality agreement that contained non-competition language. [See Doc. 13, ¶¶ 18, 60; compare Doc. 1, ¶ 21]. With its First Amended Complaint, EPC removed its Breach of Contract Claim; specifically the non-compete allegations in Doc. 1, ¶ 97. Rule 26(b) limits the scope of discovery to what is relevant to claims or defenses.

Additionally, the intrusion into Defendant’s clients and potential clients (with an ongoing obligation to update this response) would be of such marginal relevance that the potential harm occasioned by discovery would outweigh the ordinary presumption in favor of broad disclosure. *Horizon Holdings, L.L.C. v. Genmar Holdings, Inc.*, 209 F.R.D. 208, 214 (D. Kan. 2002). Yates & Yates’ clients and potential clients do not need to be revealed to EPC.

Defendant objects to this interrogatory because it seeks information that is not proportional to the needs of the case. FRCP 26(b)(1). *Norwood v. United Parcel Serv., Inc.*, No. 19-2496-DDC, 2020 WL 6196149, at \*1 (D. Kan. Oct. 22, 2020), objections overruled, No. 19-2496-DDC-JPO, 2021 WL 75641 (D. Kan. Jan. 8, 2021).

Ms. Yates was discharged and is free to compete with EPC and moreover is required to mitigate her damages under the Missouri Human Rights Act.

Defendant objects to the extent this RFP seeks work product or records containing privileged information.

7. All emails, including attachments, or calendar invitations sent from any EPC email address (i.e. < \_\_\_\_\_@epcrealestate.com >) during the period January 1, 2021 through the present, to any person who was an employee, contractor, owner or officer of Yates & Yates.

**RESPONSE:**

Defendant objects to this RFP to the extent that a “contractor” is not a defined term and it is vague/ambiguous what is meant. Based on the plain meaning, Defendant would not have control or access over the emails of a contractor.

Without waiving these objections, Defendant will produce emails responsive to this request. These will be produced as soon as possible, considering that Plaintiff requested no document search to be done on Defendant Denise Yates’ computer until the mirror image of the device is made, 11:30

a.m. on Dec. 28 – see email dated 12/23/21 and that emails are to be produced in a TIFF format rather than PDF or native format {email dated 12/23/21}

Defendant is not currently planning to provide copies of emails and attachments forwarded from the @epcrealestate.com email account to the AOL account because these have been produced by Plaintiff.

8. All Documents evidencing, constituting, or relating to Communications during the period January 1, 2021 and the present, by and between, on the one hand, any person who was at the time of the Communication an employee, contractor, owner or officer of Yates & Yates, and, on the other hand, any person who was at the time of the communication an employee of EPC. This request would not include communication of a strictly personal nature but would include communication related to or mentioning either EPC or Yates & Yates.

**RESPONSE:**

Defendant objects to this RFP to the extent that a “contractor” is not a defined term and it is vague/ambiguous what is meant. Based on the plain meaning, Defendant would not have control or access over the documents of a contractor.

Defendant objects to the extent this RFP seeks work product or records containing privileged information. Defendant objects to an ongoing obligation to keep Plaintiff informed about who is interviewed in preparation for litigation in Missouri. Under Missouri law, a list of interviewed witnesses would reveal Defendant’s attorneys’ mental impressions, conclusions, opinions, and legal theories regarding whether evidence does or does not support certain claims and the pattern of preparation for trial. *See State ex rel. Atchison, Topeka, and Santa Fe Ry. Co. v. O’Malley*, 898 S.W.2d 550, 554-555 (Mo. 1995).

Defendant objects because this RFP seeks information not relevant on its face to the claims and defenses in this case. *McBride v. Medicalodges, Inc.*, 250 F.R.D. 581, 586 (D. Kan. 2008). Rule 26(b) limits the scope of discovery to what is relevant to claims or defenses. Defendant is not sure what cause of action these records would support.

Defendant objects to the extent this RFP seeks work product or records containing privileged information. In particular, Defendant invokes work product protection over attorney notes because (1) the materials sought to be protected are documents or tangible things; (2) they were prepared in anticipation of litigation or for trial; and (3) they were prepared by or for a party or a representative of that party. *AKH Co. v. Universal Underwriters Ins. Co.*, 300 F.R.D. 684, 688 (D. Kan. 2014); *see also Pipeline Prods., Inc. v. Madison Companies, LLC*, No. 15-4890-KHV-ADM, 2019 WL 3973955, at \*5 (D. Kan. Aug. 22, 2019) (Draft non-party affidavits and communications with counsel relating to those draft affidavits are classic work product.); *Zapata*

*v. IBP, Inc.*, 175 F.R.D. 574, 576 (D. Kan. 1997); *Ryall v. Appleton Elec. Co.*, 153 F.R.D. 660, 662 (D. Colo. 1994) (denying motion to compel)

Defendant objects because this RFP seeks communications that do not constitute “previous statement” of Plaintiff (i.e., they are not binding on the company). FRCP 26(b)(3)(c).

Without waiving these objections, Defendant states that Denise Yates and Nicole Yates have not told anyone from EPC to quit their jobs.

9. All Documents, Communications and any other materials in your possession, custody, or control reflecting or referring to any direct or indirect contact with any EPC Client (including any such entity or person’s employees or agents).

**RESPONSE:**

Defendant objects to RFP 9 based on relevance. This RFP requests information for which the relevancy is not readily apparent. *McBride v. Medicalodges, Inc.*, 250 F.R.D. 581, 586 (D. Kan. 2008) The definition of EPC Customer/Client is broad enough to include anyone with whom Denise Yates had contact with over 17 years – including former clients. Therefore, this RFP is not sufficiently limited to EPC, communications about EPC, or the broadly defined EPC Materials.

There is no non-compete agreement here. With its First Amended Complaint, EPC removed allegations that Ms. Yates personally signed a confidentiality agreement that contained non-competition language. [See Doc. 13, ¶¶ 18, 60; compare Doc. 1, ¶ 21]. With its First Amended Complaint, EPC removed its Breach of Contract Claim; specifically the non-compete allegations in Doc. 1, ¶ 97. Rule 26(b) limits the scope of discovery to what is relevant to claims or defenses.

Additionally, the intrusion into Defendant’s clients and potential clients (with an ongoing obligation to update this response) would be of such marginal relevance that the potential harm occasioned by discovery would outweigh the ordinary presumption in favor of broad disclosure. *Horizon Holdings, L.L.C. v. Genmar Holdings, Inc.*, 209 F.R.D. 208, 214 (D. Kan. 2002). Yates & Yates’ clients and potential clients do not need to be revealed to EPC.

Defendant objects to this interrogatory because it seeks information that is not proportional to the needs of the case. FRCP 26(b)(1). *Norwood v. United Parcel Serv., Inc.*, No. 19-2496-DDC, 2020 WL 6196149, at \*1 (D. Kan. Oct. 22, 2020), objections overruled, No. 19-2496-DDC-JPO, 2021 WL 75641 (D. Kan. Jan. 8, 2021).

Ms. Yates was discharged and is free to compete with EPC and moreover is required to mitigate her damages under the Missouri Human Rights Act.

Defendant objects to the extent this RFP seeks work product or records containing privileged information.

It is Defendant's understanding from an email with EPC's counsel (12/20/21) that this RFP is narrowed to include only emails from 1/1/2018 to the present.

To the extent the RFP seeks information to support an unjust enrichment claim, Defendant objects to the discovery because "a claim for unjust enrichment is grounded in equity," *Marlin Oil Corp. v. Lurie*, 417 F. App'x 740, 743 (10th Cir. 2011), and discovery on this clients' records (for the purpose of proving unjust enrichment damages) is better handled at a later timeframe, when the issues surrounding liability and bad faith have already been litigated.

Without waiving these objections, Defendant will produce emails responsive to this request. These will be produced as soon as possible, considering that Plaintiff requested no document search to be done on Defendant Denise Yates' computer until the mirror image of the device is made, 11:30 a.m. on Dec. 28 – see email dated 12/23/21 and that emails are to be produced in a TIFF format rather than PDF or native format {email dated 12/23/21}

10. All Documents, Communications and any other materials in your possession, custody, or control that reference EPC.

**RESPONSE:**

It is Defendant's understanding from an email with EPC's counsel (12/20/21) that this RFP is narrowed to include only emails from 1/1/2018 to the present.

Defendant objects based on relevancy and over-breadness because there is no limitation on whether the origin of the documents was public record. For example, Defendant has market research reports that might be responsive based on Defendant's understanding of the RFP.

Defendant objects to the extent this RFP seeks work product or records containing privileged information. Defendant objects to an ongoing obligation to keep Plaintiff informed about who is interviewed in preparation for litigation in Missouri. Under Missouri law, a list of interviewed witnesses would reveal Defendant's attorneys' mental impressions, conclusions, opinions, and legal theories regarding whether evidence does or does not support certain claims and the pattern of preparation for trial. *See State ex rel. Atchison, Topeka, and Santa Fe Ry. Co. v. O'Malley*, 898 S.W.2d 550, 554-555 (Mo. 1995).

Also, Defendant objects to the extent this seeks information that the parties agreed to keep confidential (e.g., communications with mediator or Complete Legal)

Defendant objects to providing communication between Nicole Yates and Denise Yates to the extent they have shared a common interest in the outcome of this litigation.

Defendant objects to this request to the extent that it may conflict with the negotiated ESI protocol. [Doc. 45]

To the extent this RFP is seeking text messages between Denise Yates, Nicole Yates, and the owners/managers of EPC, Defendant objects because EPC has equal access to these communications. Defendant objects to the burden of producing these in a readable form to the extent EPC is asking her to be the one to shoulder the cost.

Without waiving these objections, Defendant provides

- Yates & Yates bio
- Emails from Denise Yates describing new role [to be produced as soon as possible, considering that Plaintiff requested no document search to be done on Defendant Denise Yates' computer until the mirror image of the device is made, 11:30 a.m. on Dec. 28 – see email dated 12/23/21] and that emails are to be produced in a TIFF format rather than PDF or native format {email dated 12/23/21}

11. All Documents and Communications that you have sent to any third party regarding or reflecting any Former EPC Employee's departure from EPC and/or any Former EPC Employee's new position at Yates & Yates from January 1, 2021, to present.

**RESPONSE:**

Defendant objects to the extent this RFP seeks work product or records containing privileged information. This includes the undersigned counsel and also attorney Rob Baran (who represented Nicole Yates when she was departing from EPC, as EPC is aware). Also, Defendant objects to the extent this seeks information that the parties agreed to keep confidential (e.g., communications with mediator)

Defendant objects to RFP 11 based on relevance. This RFP requests information for which the relevancy is not readily apparent. *McBride v. Medicalodges, Inc.*, 250 F.R.D. 581, 586 (D. Kan. 2008)

This RFP is overly broad. As written, the RFP requests every document and communication in which Denise Yates or Nicole Yates introduce themselves to *anybody*. There would also be an ongoing obligation to update this response for Denise Yates, Nicole Yates, and someone whom they may decide to hire. These records would be of such marginal relevance that the potential harm occasioned by discovery would outweigh the ordinary presumption in favor of broad disclosure. *Horizon Holdings, L.L.C. v. Genmar Holdings, Inc.*, 209 F.R.D. 208, 214 (D. Kan. 2002). Yates & Yates' clients and potential clients do not need to be revealed to EPC.

There is no non-compete agreement here. With its First Amended Complaint, EPC removed allegations that Ms. Yates personally signed a confidentiality agreement that contained non-competition language. [See Doc. 13, ¶¶ 18, 60; compare Doc. 1, ¶ 21]. With its First Amended Complaint, EPC removed its Breach of Contract Claim; specifically the non-compete allegations

in Doc. 1, ¶ 97. Rule 26(b) limits the scope of discovery to what is relevant to claims or defenses.

Defendant objects to this interrogatory because it seeks information that is not proportional to the needs of the case. FRCP 26(b)(1). *Norwood v. United Parcel Serv., Inc.*, No. 19-2496-DDC, 2020 WL 6196149, at \*1 (D. Kan. Oct. 22, 2020), objections overruled, No. 19-2496-DDC-JPO, 2021 WL 75641 (D. Kan. Jan. 8, 2021).

Ms. Yates was discharged and is free to compete with EPC and moreover is required to mitigate her damages under the Missouri Human Rights Act.

12. All Documents and Communications in your possession, custody or control that constitute or are comprised, in whole or in part, of EPC Materials.

**RESPONSE:**

Defendant objects to RFP 12, first, because of the vagueness, ambiguity, and broadness of the reference to EPC Materials, a 229-word definition that ultimately incorporates “other” information about EPC, its customers, and its suppliers and “any materials referenced in the Complaint.” See *Funk v. Pinnacle Health Facilities XXXII, LP*, No. 17-1099-JTM-KGG, 2018 WL 6042762, at \*4 (D. Kan. Nov. 19, 2018).

Defendant would have a massive burden in terms of time, money, and procedure to answer this question with precision. *Horizon Holdings, L.L.C. v. Genmar Holdings, Inc.*, 209 F.R.D. 208, 213 (D. Kan. 2002).

- As written, it appears to require a human eye and/or computer-assisted inspection of each document to determine if any boilerplate language, categories, or Excel formulas could match anything within EPC Materials (which by definition include un-written and un-recorded information). As Defendant’s counsel explained to EPC’s counsel, an analysis of the files’ metadata (last accessed / last modified / created) will not be sufficient to answer questions like this. [email from Defendant’s counsel, 12/23/21]
- As written, it appears to ask for every document from the 2000s and 2010s in the AOL email account of Denise Yates, which she previously used for work for EPC and its affiliated companies. The parties have agreed for counsel to search email accounts. [Doc. 45, p. 6, section C] EPC’s counsel stated in an email of 12/20/21: “It honestly never occurred to me that Denise Yates would have 20-year old communication with EPC’s clients.” EPC is requested to narrow the interrogatory so that it is not overly broad and burdensome.

Defendant objects to RFP 12 because it seeks irrelevant information. For example, the first two documents in the Defendant’s initial disclosures are presentations by brokers with financial information of EPC and its affiliated companies. This falls into the definition of EPC Materials including: customer communications regarding proposed or pending products, proposals, financial information, etc. However, the dissemination of such information by brokers indicates

that trade secrets protections do not apply. Defendant requests that EPC narrow this Interrogatory to seek information relevant to the trade secrets, unjust enrichment, or Lanham Act claims it has pleaded. Rule 26(b) limits the scope of discovery to what is relevant to claims or defenses.

Defendant also objects to the extent this RFP seeks information protected by attorney-client privilege or contained within documents protected as work product.

Denise Yates and Nicole Yates have stated in their interrogatory answers that they have customer contacts in their cell phones. Defendants object to the extent this RFP seeks to have them take a screenshot of each contact – that type of work is not proportionate to the needs of the case.

Finally, Defendant states that Denise Yates has not signed a non-compete agreement, confidentiality agreement or employee handbook for EPC.

Without waiving these objections, Defendant states the following:

If Denise Yates ever re-saved an EPC template as a Yates & Yates file, she cannot identify the document from memory. Ms. Denise Yates has been requested by EPC to not perform computer searches until Complete Legal makes a copy of her computer (11:30 a.m. on 12/28/21). If Denise Yates finds a document like this, she will produce it in response to this RFP.

Defendant is in possession of multiple proformas that were sent to her by third parties and that are not derived from EPC proformas. She is willing to share those with Plaintiff with information such as her client's name redacted.

13. All Documents and Communications that evidence or relate to the acquisition, possession, modification, adaptation, utility, value, usefulness, dissemination, use, disclosure, collection or discussion of any EPC Materials by you and/or any Former EPC Employee. This includes, but is not limited to, any Documents that are derived from, in whole or in part, EPC Materials.

**RESPONSE:**

Defendant incorporates the objections and responses to RFP 13 because this seeks information about “Documents that are derived from, in whole or in part, EPC Materials.”

Defendant also objects to the extent this RFP seeks information protected by attorney-client privilege or contained within documents protected as work product.

Defendant objects to the extent this RFP seeks work product or records containing privileged information. In particular, Defendant invokes work product protection where (1) the materials

sought to be protected are documents or tangible things; (2) they were prepared in anticipation of litigation or for trial; and (3) they were prepared by or for a party or a representative of that party. *AKH Co. v. Universal Underwriters Ins. Co.*, 300 F.R.D. 684, 688 (D. Kan. 2014); *see also Pipeline Prods., Inc. v. Madison Companies, LLC*, No. 15-4890-KHV-ADM, 2019 WL 3973955, at \*5 (D. Kan. Aug. 22, 2019) (Draft non-party affidavits and communications with counsel relating to those draft affidavits are classic work product.); *Zapata v. IBP, Inc.*, 175 F.R.D. 574, 576 (D. Kan. 1997); *Ryall v. Appleton Elec. Co.*, 153 F.R.D. 660, 662 (D. Colo. 1994) (denying motion to compel)

Without waiving these objections, Defendant believes that the response to interrogatory No. 11 to Defendant Yates is responsive to what RFP 13 is seeking. Defendant therefore incorporates the objection and answer to Interrogatory No. 11 and states that the documents identified therein are or have been produced.

14. All cell phone records pertaining to each cell phone used by each Former EPC Employee from January 1, 2021 to the present to communicate or perform work on behalf of Yates & Yates, showing records of all voice calls, text messages, and other Communications.

**RESPONSE:**

Defendant objects to RFP 14 based on relevance. This RFP requests information for which the relevancy is not readily apparent. *McBride v. Medicalodges, Inc.*, 250 F.R.D. 581, 586 (D. Kan. 2008) This Interrogatory has nothing to do with EPC, communications about EPC, or the broadly defined EPC Materials.

There is no non-compete agreement or non-solicitation agreement here. With its First Amended Complaint, EPC removed allegations that Ms. Yates personally signed a confidentiality agreement that contained non-competition language. [See Doc. 13, ¶¶ 18, 60; compare Doc. 1, ¶ 21]. With its First Amended Complaint, EPC removed its Breach of Contract Claim; specifically the non-compete allegations in Doc. 1, ¶ 97. Rule 26(b) limits the scope of discovery to what is relevant to claims or defenses.

Additionally, the intrusion into Defendant's clients and potential clients would be of such marginal relevance that the potential harm occasioned by discovery would outweigh the ordinary presumption in favor of broad disclosure. *Horizon Holdings, L.L.C. v. Genmar Holdings, Inc.*, 209 F.R.D. 208, 214 (D. Kan. 2002). Yates & Yates' clients and potential clients do not need to be revealed to EPC.

Also this RFP seeks information protected by attorney-client privilege or contained within documents protected as work product, including when and how long Nicole Yates or Denise Yates talked with their attorneys.

Defendant objects to this interrogatory because it seeks information that is not proportional to the needs of the case. FRCP 26(b)(1). *Norwood v. United Parcel Serv., Inc.*, No. 19-2496-DDC, 2020 WL 6196149, at \*1 (D. Kan. Oct. 22, 2020), objections overruled, No. 19-2496-DDC-JPO, 2021 WL 75641 (D. Kan. Jan. 8, 2021).

Ms. Yates was discharged and is free to compete with EPC and moreover is required to mitigate her damages under the Missouri Human Rights Act.

Defendant's burden in terms of time, money, and procedure would be high. *Horizon Holdings, L.L.C. v. Genmar Holdings, Inc.*, 209 F.R.D. 208, 213 (D. Kan. 2002) If Defendant were to provide responsive information, Defendant would have to hand-redact all calls/texts with counsel or non-relevant calls/texts.

15. All Documents and Communications that evidence, relate to or reference any work performed or Communications by Denise Yates on behalf of or in the interest of Yates & Yates on or before April 14, 2021.

**RESPONSE:**

Defendant objects to RFP 15 based on relevance. This RFP requests information for which the relevancy is not readily apparent. *McBride v. Medicalodges, Inc.*, 250 F.R.D. 581, 586 (D. Kan. 2008)

There is no non-compete agreement or non-solicitation agreement here. With its First Amended Complaint, EPC removed allegations that Ms. Yates personally signed a confidentiality agreement that contained non-competition language. [See Doc. 13, ¶¶ 18, 60; compare Doc. 1, ¶ 21]. With its First Amended Complaint, EPC removed its Breach of Contract Claim; specifically the non-compete allegations in Doc. 1, ¶ 97. Rule 26(b) limits the scope of discovery to what is relevant to claims or defenses.

As EPC knows, Brendon O'Leary spoke with Denise Yates and Nicole Yates about EPC in the future potentially hiring Yates & Yates to provide services to EPC. The dates of these conversations is not presently recalled, but Defendant will continue looking for related records.

As EPC knows, as of October 2020, Ms. Denise Yates was given clearly defined roles for EPC and its affiliated companies and paid significantly less than she had been making. If EPC wants to plead that Ms. Yates was restricted from working on her business under the circumstances described above, Defendant will re-evaluate its relevancy objection.

Defendant objects to RFP 15 because it seeks irrelevant information about third parties who are not litigants. The request is over-broad, vague and ambiguous. *See Funk v. Pinnacle Health Facilities XXXII, LP*, No. 17-1099-JTM-KGG, 2018 WL 6042762, at \*4 (D. Kan. Nov. 19, 2018).

In *Westgate Resorts, Ltd. v. Wesley Financial Group, LLC*, Case No. 3:20-cv-00599 (M.D. Tenn. – December 1, 2020), which was a trade secrets and Lanham Act case, the Court addressed whether a party should reveal customers of one party to the other party (in the context of a discovery dispute over an Attorney Eyes Only designation). The Court said it was “especially concerned about the injury to these nonparties, who have no part and no representation in this lawsuit.” The Court ultimately limited disclosure of customer information to a few who would be the “best source of data regarding financial loss” to the party seeking the information.

Defendant’s burden in terms of time, money, and procedure would be high. *Horizon Holdings, L.L.C. v. Genmar Holdings, Inc.*, 209 F.R.D. 208, 213 (D. Kan. 2002) This RFP is asking Defendant to disclose information about a third party who would trust Defendant with confidential information.

16. All Documents and Communications that evidence, relate to or reference any work performed or Communications by Nicole Yates on behalf of, in the interest of, or with Yates & Yates on or before July 30, 2021.

**RESPONSE:**

Nicole Yates did not perform work for Yates & Yates on or before this date.

17. For the period October 1, 2018, to the present, all communication and documents regarding or relating to any strategy, directive, business goal or objective, business plan, marketing plan, or other plan to establish, market, advertise, maintain or promote the work and services of Yates & Yates.

**RESPONSE:**

Defendant objects to RFP 17 based on relevance. This RFP requests information for which the relevancy is not readily apparent. *McBride v. Medicalodges, Inc.*, 250 F.R.D. 581, 586 (D. Kan. 2008)

There is no non-compete agreement or non-solicitation agreement here. With its First Amended Complaint, EPC removed allegations that Ms. Yates personally signed a confidentiality agreement that contained non-competition language. [See Doc. 13, ¶¶ 18, 60; compare Doc. 1, ¶ 21]. With its First Amended Complaint, EPC removed its Breach of Contract Claim; specifically

the non-compete allegations in Doc. 1, ¶ 97. Rule 26(b) limits the scope of discovery to what is relevant to claims or defenses.

As EPC knows, Brendon O’Leary spoke with Denise Yates and Nicole Yates about EPC in the future potentially hiring Yates & Yates to provide services to EPC. The dates of these conversations is not presently recalled, but Defendant will continue looking for related records.

As EPC knows, as of October 2020, Ms. Denise Yates was given clearly defined roles for EPC and its affiliated companies and paid significantly less than she had been making. If EPC wants to plead that Ms. Yates was restricted from working on her business under the circumstances described above, Defendant will re-evaluate its relevancy objection.

Defendant objects to the extent this RFP seeks records containing privileged information or work product records, since the defense of this lawsuit is responsive.

18. All non-privileged Communications regarding or referring to the material facts or allegations set forth in paragraphs 7 through 44 of the Complaint.

**RESPONSE:**

Defendant objects to the extent this RFP seeks work product or records containing privileged information. In particular, Defendant invokes work product protection where (1) the materials sought to be protected are documents or tangible things; (2) they were prepared in anticipation of litigation or for trial; and (3) they were prepared by or for a party or a representative of that party. *AKH Co. v. Universal Underwriters Ins. Co.*, 300 F.R.D. 684, 688 (D. Kan. 2014); *see also Pipeline Prods., Inc. v. Madison Companies, LLC*, No. 15-4890-KHV-ADM, 2019 WL 3973955, at \*5 (D. Kan. Aug. 22, 2019) (Draft non-party affidavits and communications with counsel relating to those draft affidavits are classic work product.); *Zapata v. IBP, Inc.*, 175 F.R.D. 574, 576 (D. Kan. 1997); *Ryall v. Appleton Elec. Co.*, 153 F.R.D. 660, 662 (D. Colo. 1994) (denying motion to compel)

Also, Defendant objects to the extent this seeks information that the parties agreed to keep confidential (e.g., communications with mediator or Complete Legal)

Without waiving these objections, Defendant states that records from her computer and jump drive are being produced pursuant to the ESI protocol; emails are being produced as soon as possible, considering that Plaintiff requested no document search to be done on Defendant Denise Yates’ computer until the mirror image of the device is made, 11:30 a.m. on Dec. 28 – see email dated 12/23/21] and that emails are to be produced in a TIFF format rather than PDF or native format (email dated 12/23/21)], and the Yates & Yates brochure is being produced herewith. Additionally, responsive records have been provided in the Initial Disclosures and as exhibits to the court filings.

19. All Documents upon which you have relied or intend to rely in opposing EPC's claims and/or rebutting any of the allegations contained in the Complaint.

**RESPONSE:**

Defendant objects to the extent this RFP seeks work product or records containing privileged information. In particular, Defendant invokes work product protection where (1) the materials sought to be protected are documents or tangible things; (2) they were prepared in anticipation of litigation or for trial; and (3) they were prepared by or for a party or a representative of that party. *AKH Co. v. Universal Underwriters Ins. Co.*, 300 F.R.D. 684, 688 (D. Kan. 2014); *see also Pipeline Prods., Inc. v. Madison Companies, LLC*, No. 15-4890-KHV-ADM, 2019 WL 3973955, at \*5 (D. Kan. Aug. 22, 2019) (Draft non-party affidavits and communications with counsel relating to those draft affidavits are classic work product.); *Zapata v. IBP, Inc.*, 175 F.R.D. 574, 576 (D. Kan. 1997); *Ryall v. Appleton Elec. Co.*, 153 F.R.D. 660, 662 (D. Colo. 1994) (denying motion to compel)

Defendant objects to an ongoing obligation to keep Plaintiff informed about who is interviewed in preparation for litigation in Missouri. Under Missouri law, a list of interviewed witnesses would reveal Defendant's attorneys' mental impressions, conclusions, opinions, and legal theories regarding whether evidence does or does not support certain claims and the pattern of preparation for trial. *See State ex rel. Atchison, Topeka, and Santa Fe Ry. Co. v. O'Malley*, 898 S.W.2d 550, 554-555 (Mo. 1995).

Also, Defendant objects to the extent this seeks information that the parties agreed to keep confidential (e.g., communications with mediator or Complete Legal)

20. All Documents and Communications regarding or reflecting any written or recorded statement, affidavit or declaration made or taken relating to this Lawsuit (including but not limited to sworn and unsworn declarations or affidavits, whether filed or not).

**RESPONSE:**

Defendant objects to the extent this RFP seeks work product or records containing privileged information. In particular, Defendant invokes work product protection where (1) the materials sought to be protected are documents or tangible things; (2) they were prepared in anticipation of litigation or for trial; and (3) they were prepared by or for a party or a representative of that party. *AKH Co. v. Universal Underwriters Ins. Co.*, 300 F.R.D. 684, 688 (D. Kan. 2014); *see also Pipeline Prods., Inc. v. Madison Companies, LLC*, No. 15-4890-KHV-ADM, 2019 WL 3973955, at \*5 (D. Kan. Aug. 22, 2019) (Draft non-party affidavits and communications with counsel relating to those draft affidavits are classic work product.); *Zapata v. IBP, Inc.*, 175

F.R.D. 574, 576 (D. Kan. 1997); *Ryall v. Appleton Elec. Co.*, 153 F.R.D. 660, 662 (D. Colo. 1994) (denying motion to compel)

Defendant objects to an ongoing obligation to keep Plaintiff informed about who is interviewed in preparation for litigation in Missouri. Under Missouri law, a list of interviewed witnesses would reveal Defendant's attorneys' mental impressions, conclusions, opinions, and legal theories regarding whether evidence does or does not support certain claims and the pattern of preparation for trial. *See State ex rel. Atchison, Topeka, and Santa Fe Ry. Co. v. O'Malley*, 898 S.W.2d 550, 554-555 (Mo. 1995).

Also, Defendant objects to the extent this seeks information that the parties agreed to keep confidential (e.g., communications with mediator or Complete Legal)

Without waiving this objection, Defendant states that responsive documents have been produced in the Initial Disclosures (e.g., Kerry Mattson's computer screenshots) and that emails will be produced. [to be produced as soon as possible, considering that Plaintiff requested no document search to be done on Defendant Denise Yates' computer until the mirror image of the device is made, 11:30 a.m. on Dec. 28 – see email dated 12/23/21] and that emails are to be produced in a TIFF format rather than PDF or native format (email dated 12/23/21)]

21. All Documents referenced in or relied upon in making any declaration filed or relied upon in the Lawsuit.

#### **RESPONSE:**

Defendant objects to the extent this RFP seeks work product or records containing privileged information. In particular, Defendant invokes work product protection where (1) the materials sought to be protected are documents or tangible things; (2) they were prepared in anticipation of litigation or for trial; and (3) they were prepared by or for a party or a representative of that party. *AKH Co. v. Universal Underwriters Ins. Co.*, 300 F.R.D. 684, 688 (D. Kan. 2014); *see also Pipeline Prods., Inc. v. Madison Companies, LLC*, No. 15-4890-KHV-ADM, 2019 WL 3973955, at \*5 (D. Kan. Aug. 22, 2019) (Draft non-party affidavits and communications with counsel relating to those draft affidavits are classic work product.); *Zapata v. IBP, Inc.*, 175 F.R.D. 574, 576 (D. Kan. 1997); *Ryall v. Appleton Elec. Co.*, 153 F.R.D. 660, 662 (D. Colo. 1994) (denying motion to compel)

Defendant objects to an ongoing obligation to keep Plaintiff informed about who is interviewed in preparation for litigation in Missouri. Under Missouri law, a list of interviewed witnesses would reveal Defendant's attorneys' mental impressions, conclusions, opinions, and legal theories regarding whether evidence does or does not support certain claims and the pattern of preparation for trial. *See State ex rel. Atchison, Topeka, and Santa Fe Ry. Co. v. O'Malley*, 898 S.W.2d 550, 554-555 (Mo. 1995).

Also, Defendant objects to the extent this seeks information that the parties agreed to keep confidential (e.g., communications with mediator or Complete Legal)

Without waiving these objections, Defendant states that the declarations filed as Doc. 8-1 and Doc. 23-1 are supported by Denise Yates' memory and records that are identified within the declarations. These were uploaded as exhibits, available on the internet, or already in the possession of EPC. The current brochure is produced herewith.

22. All Documents referenced in or relied upon in any other filing in this Lawsuit.

**RESPONSE:**

Defendant objects to the extent this RFP seeks work product or records containing privileged information – including legal research memos and notes. In particular, Defendant invokes work product protection where (1) the materials sought to be protected are documents or tangible things; (2) they were prepared in anticipation of litigation or for trial; and (3) they were prepared by or for a party or a representative of that party. *AKH Co. v. Universal Underwriters Ins. Co.*, 300 F.R.D. 684, 688 (D. Kan. 2014); *see also Pipeline Prods., Inc. v. Madison Companies, LLC*, No. 15-4890-KHV-ADM, 2019 WL 3973955, at \*5 (D. Kan. Aug. 22, 2019) (Draft non-party affidavits and communications with counsel relating to those draft affidavits are classic work product.); *Zapata v. IBP, Inc.*, 175 F.R.D. 574, 576 (D. Kan. 1997); *Ryall v. Appleton Elec. Co.*, 153 F.R.D. 660, 662 (D. Colo. 1994) (denying motion to compel)

Without waiving these objections, Defendant states that records from her computer and jump drive are being produced pursuant to the ESI protocol; emails are being produced as soon as possible, considering that Plaintiff requested no document search to be done on Defendant Denise Yates' computer until the mirror image of the device is made, 11:30 a.m. on Dec. 28 – see email dated 12/23/21] and that emails are to be produced in a TIFF format rather than PDF or native format (email dated 12/23/21)], and the Yates & Yates brochure is being produced herewith.

23. All Documents that relate to or reflect Yates & Yates's formation, registration as a foreign limited liability company in any state, corporate form, ownership, affiliates, investors, and related entities.

**RESPONSE:**

Defendant objects to the extent this RFP seeks work product or records containing privileged information. Defendant had attorney Rob Baran prepare these records.

Defendant objects because this RFP seeks information not relevant on its face to the claims and defenses in this case. *McBride v. Medicalodges, Inc.*, 250 F.R.D. 581, 586 (D. Kan. 2008). Rule 26(b) limits the scope of discovery to what is relevant to claims or defenses. Defendant is not sure what cause of action these records would support.

24. All Documents regarding or evidencing, in whole or in part, the Brochure identified in paragraph 40 of the Complaint, expressly including any and all drafts of the Brochure, subsequent versions of the brochure, and all Communications with any other person in which the Brochure is discussed, attached, delivered or otherwise mentioned.

**RESPONSE:**

Defendant objects to the extent this RFP seeks work product or records containing privileged information – including legal research memos and notes on Lanham Act claims. In particular, Defendant invokes work product protection where (1) the materials sought to be protected are documents or tangible things; (2) they were prepared in anticipation of litigation or for trial; and (3) they were prepared by or for a party or a representative of that party. *AKH Co. v. Universal Underwriters Ins. Co.*, 300 F.R.D. 684, 688 (D. Kan. 2014); *see also Pipeline Prods., Inc. v. Madison Companies, LLC*, No. 15-4890-KHV-ADM, 2019 WL 3973955, at \*5 (D. Kan. Aug. 22, 2019) (Draft non-party affidavits and communications with counsel relating to those draft affidavits are classic work product.); *Zapata v. IBP, Inc.*, 175 F.R.D. 574, 576 (D. Kan. 1997); *Ryall v. Appleton Elec. Co.*, 153 F.R.D. 660, 662 (D. Colo. 1994) (denying motion to compel)

Defendant states that Denise Yates has not signed a non-compete agreement, confidentiality agreement or employee handbook for EPC.

To the extent this RFP is making use of the discovery process to learn the identity of the Yates & Yates clients and potential clients, this RFP seeks irrelevant information that is not proportional to the needs of the case. FRCP 26(b)(1); *Norwood v. United Parcel Serv., Inc.*, No. 19-2496-DDC, 2020 WL 6196149, at \*1 (D. Kan. Oct. 22, 2020), objections overruled, No. 19-2496-DDC-JPO, 2021 WL 75641 (D. Kan. Jan. 8, 2021). Also, this seeks to interrupt the acquisition of potential clients. It is the responsibility of Denise Yates (who has claims against EPC and its affiliated companies) to mitigate damages and earn a living.

In *Westgate Resorts, Ltd. v. Wesley Financial Group, LLC*, Case No. 3:20-cv-00599 (M.D. Tenn. – December 1, 2020), which was a trade secrets and Lanham Act case, the Court addressed whether a party should reveal customers of one party to the other party (in the context of a discovery dispute over an Attorney Eyes Only designation). The Court said it was “especially concerned about the injury to these nonparties, who have no part and no representation in this lawsuit.” The Court ultimately limited disclosure of customer information to a few who would be the “best source of data regarding financial loss” to the party seeking the information. In this case, the contacts identified in Denise Yates’ answer to Interrogatory No. 8 are the best source of information regarding whether anyone was confused or misled by the brochure.

Additionally, the intrusion into Defendant's clients and potential clients (with an ongoing obligation to update this response) would be of such marginal relevance that the potential harm occasioned by discovery would outweigh the ordinary presumption in favor of broad disclosure. *Horizon Holdings, L.L.C. v. Genmar Holdings, Inc.*, 209 F.R.D. 208, 214 (D. Kan. 2002). Yates & Yates' clients and potential clients do not need to be revealed to EPC.

Defendant objects to this RFP because it seeks information that is not proportional to the needs of the case. FRCP 26(b)(1). *Norwood v. United Parcel Serv., Inc.*, No. 19-2496-DDC, 2020 WL 6196149, at \*1 (D. Kan. Oct. 22, 2020), objections overruled, No. 19-2496-DDC-JPO, 2021 WL 75641 (D. Kan. Jan. 8, 2021).

Also, Defendant objects to the extent this seeks information that the parties agreed to keep confidential (e.g., communications with mediator or Complete Legal)

Without waiving these objections, Defendant states that emails from Denise Yates describing new role and attaching the original brochure will be produced as soon as possible, considering that Plaintiff requested no document search to be done on Defendant Denise Yates' computer until the mirror image of the device is made, 11:30 a.m. on Dec. 28 – see email dated 12/23/21] and that emails are to be produced in a TIFF format rather than PDF or native format (email dated 12/23/21). The current brochure is produced herewith.

25. All Documents regarding or evidencing, in whole or in part, any Yates & Yates marketing materials in which EPC projects or clients are depicted or mentioned, expressly including any and all drafts of such materials and all Communications with any other person in which such materials are discussed, attached, delivered or otherwise mentioned.

**RESPONSE:**

Defendant incorporates the objections and answer to RFP 24.

26. All Documents and Communications related to this Lawsuit that are received in response to a subpoena, an open records request under the laws of any state, or otherwise from third parties pursuant to a request from you or anyone acting on your behalf.

**RESPONSE:**

Defendant objects to the extent this RFP seeks work product or records containing privileged information. In particular, Defendant invokes work product protection where (1) the materials sought to be protected are documents or tangible things; (2) they were prepared in anticipation of litigation or for trial; and (3) they were prepared by or for a party or a representative of that party. *AKH Co. v. Universal Underwriters Ins. Co.*, 300 F.R.D. 684, 688 (D. Kan. 2014); *see also Pipeline Prods., Inc. v. Madison Companies, LLC*, No. 15-4890-KHV-ADM, 2019 WL 3973955, at \*5 (D. Kan. Aug. 22, 2019) (Draft non-party affidavits and communications with counsel relating to those draft affidavits are classic work product.); *Zapata v. IBP, Inc.*, 175 F.R.D. 574, 576 (D. Kan. 1997); *Ryall v. Appleton Elec. Co.*, 153 F.R.D. 660, 662 (D. Colo. 1994) (denying motion to compel)

Defendant objects to an ongoing obligation to keep Plaintiff informed about who is interviewed in preparation for litigation in Missouri. Under Missouri law, a list of interviewed witnesses would reveal Defendant's attorneys' mental impressions, conclusions, opinions, and legal theories regarding whether evidence does or does not support certain claims and the pattern of preparation for trial. *See State ex rel. Atchison, Topeka, and Santa Fe Ry. Co. v. O'Malley*, 898 S.W.2d 550, 554-555 (Mo. 1995).

Also, Defendant objects to the extent this seeks information that the parties agreed to keep confidential (e.g., communications with mediator or Complete Legal)

Without waiving this objection, Defendant states responsive information has been provided (Woodbury Corp. subpoena) and will be provided.

27. Any report, including all documentation relied upon, from any expert retained by you in this matter.

**RESPONSE:**

Will be produced in accordance with Court's Order.

28. Each insurance agreement under which coverage may be available to satisfy costs of defense and/or part or all of a judgment that may be entered in the Lawsuit or to indemnify or reimburse for payments made to satisfy the judgment.

**RESPONSE:**

Not applicable.

29. Any document you intend to use as an exhibit at any hearing or trial in this matter.

**RESPONSE:**

Will be produced in accordance with Court's Order.

Respectfully submitted,

RAHM, RAHM & McVAY, P.C.

/s/ Cristina Olson

Cristina Olson #79005

511 Foster Lane

Warrensburg, MO 64093

(330) 322-3917

cristina@rahmlaw.com

Carrie M. Brous, KS #18157

BROUS LAW LLC

3965 West 83rd Street, #115

Prairie Village, KS 66208

Tel: (913) 209-8596

cbrous@brouslaw.com

**ATTORNEYS FOR DEFENDANTS**

CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2021, the foregoing document was emailed to counsel for Plaintiff, Samantha Monsees (smonsees@fisherphillips.com) and Melody Rayl (mrayl@fisherphillips.com)

/s/ Cristina Olson

Cristina Olson

Attorney for Defendants

# EXHIBIT E

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

<b>EPC REAL ESTATE GROUP, LLC,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>Case No. 2:21-cv-02383-JWB-JPO</b>
<b>v.</b>	)	
	)	
<b>YATES &amp; YATES, LLC,</b>	)	
	)	
<b>and</b>	)	
	)	
<b>DENISE YATES,</b>	)	
	)	
<b>Defendants.</b>	)	

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**PLAINTIFF’S RESPONSES TO DEFENDANT  
DENISE YATES’ FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

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Plaintiff EPC Real Estate Group, LLC (“EPC”) pursuant to Rule 34 of the Federal Rules of Civil Procedure, hereby responds or otherwise objects to *Defendant Denise Yates’ First Request for Production of Documents to Plaintiff*.

**DOCUMENT REQUESTS**

1. The correspondence identified in Plaintiff’s Memorandum in Support of Plaintiff’s Amended Motion for Preliminary Injunction and Expedited Hearing, page 4, ¶ 11: “On that same day, EPC sent Yates correspondence to her EPC email address instructing her to return her laptop, company credit card, and keys, by the end of the day, April 16, 2021.” (See also Doc. 13, ¶¶ 21-22: “correspondence to Yates’ EPC email account instructing Yates to return her EPC issued computers, company credit card, and office keys, by the end of the day on April 16, 2021.”)

**RESPONSE: See documents previously produced.**

2. Any correspondence in which the communication identified in RFP No. 1 is forwarded, copied, or discussed by EPC, with the exception of correspondence protected by attorney-client privilege.<sup>1</sup>

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<sup>1</sup> This is relevant to EPC’s processes to protect information that it owns, which would fit within the chronological narrative that EPC put at issue in this case. See First Amended Verified Complaint, Doc. 13, page 4 *et seq.*; Memorandum in Support of Plaintiff’s Amended Motion for Preliminary Injunction and Expedited Hearing, Doc. 15, page 4 *et seq.*

**RESPONSE: See document production.**

3. Any documents evidencing an analysis done on Ms. Yates' computers after she returned them to EPC. This is intended to include without limitation the report identified in Doc. 25-1, page 3, ¶ 15:

“In August 2021, as part of EPC’s investigation into Yates’ misappropriation of EPC’s trade secrets, EPC engaged a third-party vendor to conduct a forensic analysis of both of Yates’ devices. The vendor confirmed that on or about April 28, 2021, both of Yates’ devices had been wiped and the Windows operating system reinstalled.”

**RESPONSE: EPC objects to this request as there was no “report” identified in Doc 25-1, Page 3. In further response, see documents previously produced.**

4. The Datto audit logs referenced on Doc. 25-1, page 4, ¶ 17.

“On September 24, 2021, I was informed that Yates had in her possession at least one additional EPC financial proforma document (“VRR Proforma”) that was not among the documents Yates attached to emails and forwarded to her personal email address on April 14 and 15, 2021. There is also no record on the Datto audit logs of Yates accessing this document within Datto.”

**RESPONSE: See documents previously produced.**

5. Records that evidence the Datto Workplace level of service or features that Plaintiff EPC Real Estate Group used in the timeframe of January 1, 2021, through April 15, 2021, and the cost of those services. (e.g., a contract with Datto; correspondence or an agreement with AccurIT describing the Datto services in place).

**RESPONSE: No responsive documents.**

6. Records reflecting any request of Ms. Yates to back-date records as described in the Plaintiff’s Response in Opposition to Defendant’s Motion to Stay Proceedings, Doc. 16, page 4:

“The Confidentiality Agreement, which is identical to agreements signed by other employees of EPC, was executed by Yates in or about January 2015 along with a number of other personnel related documents maintained in her personnel file. The Confidentiality Agreement, along with all of the other documents Yates signed on

that date, were backdated by Yates to the date on which she became a full-time employee based on payroll records available at that time.”

**RESPONSE: No responsive documents.**

7. The “agreements signed by other employees of EPC” that are referenced in Plaintiff’s Response in Opposition to Defendant’s Motion to Stay Proceedings, Doc. 16, page 4:

“The Confidentiality Agreement, which is identical to agreements signed by other employees of EPC, was executed by Yates in or about January 2015 along with a number of other personnel related documents maintained in her personnel file. The Confidentiality Agreement, along with all of the other documents Yates signed on that date, were backdated by Yates to the date on which she became a full-time employee based on payroll records available at that time.”

**RESPONSE: See document production.**

8. For each of the documents listed below, documents that reflect, for the period of the document’s creation until the present, the folder in which the document has been kept, the security level of the document, the security level of the folder, whether the file was encrypted, and whether the document was prevented from being printed, emailed, or removed from that folder.

- a) “225 Proposed Market Rent”
- b) “Asset Management Vision Traction Organizer”
- c) “041318\_VRR Proforma\_Tracking”

**RESPONSE: No responsive documents.**

9. Records evidencing when Defendant Yates’ access to the Datto Workplace was terminated.

**RESPONSE: See documents previously produced.**

10. Records evidencing when Defendant Yates’ access to EPC email was terminated.

**RESPONSE: See document production.**

11. All records concerning Plaintiff EPC Real Estate Group that demands a return of EPC information.

**RESPONSE: EPC objects to this Request as vague and ambiguous to the extent it is not clear what documents are sought by the phrase “demands a return of EPC information,” and because there is no temporal scope.**

**In further response, and based on EPC’s understanding of what is being sought, see documents previously produced reflecting EPC’s demands that Defendant Denise Yates return EPC’s information.**

Respectfully submitted,

*/s/ Samantha J. Monsees*

Melody L. Rayl                      KS Bar # 23730

Samantha J. Monsees              KS Bar # 25936

Laura Bailey Brown                D. Kan. # 78908

**FISHER & PHILLIPS, LLP**

4900 Main Street, Suite 650

Kansas City, MO 64112

Phone: (816) 842-8770

Facsimile: (816) 842-8767

Email: mrayl@fisherphillips.com

Email: smonsees@fisherphillips.com

Email: lkbrown@fisherphillips.com

ATTORNEYS FOR PLAINTIFF

EPC REAL ESTATE GROUP, LLC

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 28th day of December 2021, the foregoing document was sent via electronic mail to the following:

Carrie M. Brous  
**BROUS LAW LLC**  
3965 W. 83<sup>rd</sup> Street, Suite 115  
Prairie Village, KS 66208  
Phone: 913.209.8596  
Email: [cbrous@brouslaw.com](mailto:cbrous@brouslaw.com)

Cristina Olson  
**RAHM, RAHM & MCVAY, P.C.**  
511 Foster Lane  
Warrensburg, MO  
Tel: (913) 209-8596  
Email: [cristina@rahmlaw.com](mailto:cristina@rahmlaw.com)

*/s/ Samantha J. Monsees*  
\_\_\_\_\_  
**ATTORNEY FOR PLAINTIFF**

# EXHIBIT F

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

<b>EPC REAL ESTATE GROUP, LLC,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>Case No. 2:21-cv-02383-JWB-JPO</b>
<b>v.</b>	)	
	)	
<b>YATES &amp; YATES, LLC,</b>	)	
	)	
<b>and</b>	)	
	)	
<b>DENISE YATES,</b>	)	
	)	
<b>Defendants.</b>	)	

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**PLAINTIFF’S RESPONSES TO DEFENDANT  
DENISE YATES’ FIRST SET OF INTERROGATORIES**

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Plaintiff EPC Real Estate Group, LLC (“EPC”) pursuant to Rule 33 of the Federal Rules of Civil Procedure, hereby responds or otherwise objects to *Defendant Denise Yates’ First Set of Interrogatories to Plaintiff*.

**INTERROGATORIES**

1. Please identify each individual who decided, or who had a role in the decision, to direct Defendant Denise Yates (via her counsel) to have computer data restored before she returned computers to EPC, and identify any and all records (e.g., emails, notes, text messages) that relate to or reflect this decision.

**ANSWER: EPC states that no individual directed Denise Yates, through her counsel or otherwise, to have her computer data restored before she returned her computers to EPC.**

2. Regarding each trade secret alleged to be at issue in this case, for each filename, category of information, or subcategory of information alleged to be a trade secret, please identify which legal entity is the owner of the trade secret.

**ANSWER: EPC Real Estate Group, LLC is the owner of the documents referenced in EPC’s response to Interrogatory No. 6.**

3. Please identify the intellectual property lawyer that is referenced in the letter of June 2, 2021, to counsel for Defendant Denise Yates, page 3: “Ms. Yates actions have necessitated EPC retaining an intellectual property lawyer to advise EPC of their next steps.”

**ANSWER: Jim Kernell, Erickson Kernell, IP.**

4. Please describe how the document attached as Exhibit A to the original Complaint [Doc. 1-1] came to be created, and identify any and all records (e.g., emails, notes, text messages) that was relate to Exhibit A and that were created during the timeframe that you say Exhibit A was created.

**ANSWER: EPC states that on or around December 15, 2014, Gina Johnson began her employment with EPC as Operations Manager. As part of that role, Johnson was tasked with organizing and completing EPC’s personnel files, as many of the employee personnel files, including that of Denise Yates, were incomplete at that time.**

**Prior to Johnson’s employment, Denise Yates was largely responsible for maintaining EPC’s personnel files, including distributing policies and new hire forms to new EPC employees. On or around December 17, 2014, in conjunction with Johnson’s task to organize EPC’s personnel files, Yates directed Johnson to new hire forms and policies located within EPC’s files that Yates previously had new employees execute as part of the onboarding and hiring process, including the EPC Confidentiality Agreement (“Agreement”), and instructed Johnson to place the Agreement onto EPC letterhead. In or around January 2015, after the Agreement had been placed on EPC letterhead and because Johnson could not locate an executed copy of the Agreement and a myriad of other documents in Yates’ personnel file, Yates executed the Agreement, along with other personnel related documents, and backdated them to May 28, 2013, consistent with Yates’ start date as a full-time Asset Manager as listed in Yates’ payroll profile at that time.**

**In further response, and pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, EPC states information responsive to this interrogatory is included in documents produced at EPC\_001689-EPC\_001693.**

5. Please describe your policy/policies about how a former EPC employee may remove personal information from an EPC computer before returning it.

**ANSWER: EPC does not have any policy stating how a former EPC employee may remove personal information from an EPC computer before returning it.**

6. Please specifically identify all documents you claim are trade secrets or that you claim contain trade secrets.

**ANSWER:** EPC objects to this interrogatory as premature given that Defendants have not yet provided the full scope of documents that were taken from EPC by Yates and have not yet produced any information or documents from which EPC can discern Defendants' subsequent use or disclosure of EPC's confidential, proprietary or trade secret information.

In further response, and pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, EPC states information responsive to this interrogatory is included in documents produced at EPC\_000036-EPC\_000039; EPC\_000071-EPC\_000074; EPC\_000240-EPC\_000244; EPC\_000260-EPC\_000264; EPC\_000265-EPC\_000270; EPC\_000295-EPC\_000300; EPC\_000337-EPC\_000342; EPC\_000466-EPC\_000553; EPC\_000582-EPC\_000587; and EPC\_001671-EPC\_001688. EPC further states that additional responsive documents are currently in the possession, custody and/or control of Defendants. Discovery in this matter has only just begun, and EPC reserves the right to seasonably supplement its response as permitted under the applicable Federal Rules of Civil Procedure and Orders of the Court.

7. Regarding the communication(s) referenced in ¶ 40 of the First Amended Verified Complaint [Doc. 13], please identify all individuals who were participants in and/or witnesses to this communication, describe the content of the communication, and identify any records that reflect this communication.

**ANSWER:** Pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, EPC states information responsive to this interrogatory is included in documents previously produced at EPC\_000716-EPC\_000723 and EPC\_001671-EPC\_1688.

8. State the names of any former EPC employee against whom you have brought suit or upon whom you have made a demand.

**ANSWER:** EPC objects that this interrogatory is overly broad, vague and ambiguous to the extent it contains no limitations regarding subject matter or time frame, and the term "demand" is not defined. In further response, and based on EPC's understanding that this interrogatory seeks the names of individuals against whom EPC has brought suit or made a demand with respect to the failure to return EPC property, misappropriation of trade secrets and/or violation of confidentiality obligations, EPC states Denise Yates is the only former employee who EPC is aware has engaged in such conduct and is, therefore, the only former employee against whom EPC has brought suit or made a demand related to such conduct.

Respectfully submitted,

*/s/ Samantha J. Monsees*

Melody L. Rayl                      KS Bar # 23730

Samantha J. Monsees              KS Bar # 25936

Laura Bailey Brown              D. Kan. # 78908

**FISHER & PHILLIPS, LLP**

4900 Main Street, Suite 650

Kansas City, MO 64112

Phone: (816) 842-8770

Facsimile: (816) 842-8767

Email: mrayl@fisherphillips.com

Email: smonsees@fisherphillips.com

Email: lkbrown@fisherphillips.com

ATTORNEYS FOR PLAINTIFF  
EPC REAL ESTATE GROUP, LLC

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 28th day of December 2021, the foregoing document was sent via electronic mail to the following:

Carrie M. Brous  
**BROUS LAW LLC**  
3965 W. 83<sup>rd</sup> Street, Suite 115  
Prairie Village, KS 66208  
Phone: 913.209.8596  
Email: [cbrous@brouslaw.com](mailto:cbrous@brouslaw.com)

Cristina Olson  
**RAHM, RAHM & MCVAY, P.C.**  
511 Foster Lane  
Warrensburg, MO  
Tel: (913) 209-8596  
Email: [cristina@rahmlaw.com](mailto:cristina@rahmlaw.com)

*/s/ Samantha J. Monsees* \_\_\_\_\_

